

From: Cantello, Nicole [cantello.nicole@epa.gov]
Sent: 7/12/2022 7:39:19 PM
To: Owens Powell, Marie [Owens.Mariejr@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]; Coomber, Robert [coomber.robert@epa.gov]; Schreyer, Andrew (he/him) [Schreyer.Andrew@epa.gov]; Breslin, John [breslin.john@epa.gov]; Bracewell, Terrell [Bracewell.Terrell.R@epa.gov]; Smith, Kathryn [Smith.Kathryn@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Marshall, Kim [Marshall.Kim@epa.gov]; Eme, Sunday [Eme.Sunday@epa.gov]; Wiley, Ronald [Wiley.Ronald@epa.gov]; John Howard [John.Howard@afge.org]; Spears, Rasheena [spears.rasheena@epa.gov]; Lobatos, Stacey [Lobatos.Stacey@epa.gov]; Grecco, Solymar (she/her) [Grecco.Solymar@epa.gov]; Cunitz, Chasen J. [cunitz.chasen@epa.gov]; Casazza, Jerri [Casazza.Jerri@epa.gov]; Lopez, Jessica [Lopez.Jessica@epa.gov]; Mcgrue, LaShawn [Mcgrue.Lashawn@epa.gov]; 8:orgid:feedb30d-a3c2-455c-b897-a41d78d16133

Section 12. Expedited Arbitration

A. The Parties agree that certain cases can appropriately be referred to an expedited arbitration procedure. The Parties have identified the following grievances as appropriate for expedited

125

arbitration:

1. Travel Issues (denial of claims and/or hardship requests as result of proposed PCS/TDY)

2. Disciplinary Actions

3. Denials of Leave

4. Dues Withholding

5. Denials of request for Official Time

6. Bulletin Board postings and literature distribution

7. Denials of requests to use credit hours

B. The request for expedited arbitration under this Article must be made within ten (10) workdays after receipt of the final Employer decision by the Union.

C. The same procedures identified earlier in this Article will be used for selecting the arbitrator.

D. The arbitrator will conduct the hearing within ten (10) calendar days after being notified of his/her selection, subject to the availability of witnesses and party representatives. If the selected arbitrator is unable to hear the case within this time frame, the last struck arbitrator on the list will be selected, unless otherwise agreed to by the Parties.

E. By mutual agreement, the Parties may arrange for a pre-hearing conference with or without the arbitrator, to consider means of expediting the hearing. For example, by reducing the issue(s) to writing, stipulating facts, exchanging lists of proposed witnesses, and/or authenticating proposed exhibits.

Section 13. Procedures for Expedited Arbitration

A. The arbitration will be held on EPA premises at the grievant's post of duty or any mutually agreed upon site.

B. The following procedural guidelines will apply:

1. The hearing shall be informal;

2. A verbatim transcript will not be prepared. Upon submission of reasonable proof to the arbitrator that a witness who has personal knowledge of the facts involved cannot be physically present, the arbitrator may accept an affidavit. The arbitrator should accord weight to this type of evidence as the circumstances warrant given the inability of the opposing party to cross-examine. Copies of affidavits will be made available to all parties concerned; and

3. The arbitrator will be requested to issue an expedited decision no later than five days from the closing of the record.

4. All other matters will be governed by sections 1-12.

Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 3/1/2022 8:17:11 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Owens Powell, Marie [Owens.Mariejr@epa.gov]; Cantello, Nicole [cantello.nicole@epa.gov]; Chen, Justin [Chen.Justin@epa.gov]; Christenson, Dave [Christenson.Dave@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Gebhardt, Chris [Gebhardt.Chris@epa.gov]; Greaves, Natasha [Greaves.Natasha@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Krebs, Ken [krebs.ken@epa.gov]; McIntyre, Crystal [McIntyre.Crystal@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Natasha AFGE [afgelocal1110r10@gmail.com]; Paff, Patricia [paff.patricia@epa.gov]; Starnes, Brad [starnes.brad@epa.gov]; Al-Mudallal, Amer [Al-Mudallal.Amer@epa.gov]; Davis, Zakiya [Davis.Zakiya@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Lynne, Diane [Lynne.Diane@epa.gov]; Mills, Lesley [Mills.Lesley@epa.gov]; Oliver, Leah [Oliver.Leah@epa.gov]; Sims, Mark [Sims.Mark@epa.gov]
Subject: Demand to Bargain/Information Request EIF Appointments
Attachments: EIF Demand to Bargain and Info Request.pdf

Please see attached AFGE Council 238 Demand to Bargain and Information Request regarding the EIF Appointments. Please let me know if you have any questions.

Marie Owens Powell

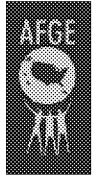
President

AFGE Council 238

PHONE: 215-814-3384

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AFGE Council 238

Robert Coomber
United States Environmental Protection Agency
Labor Employee Relations
OMS-OHR-LERD
1200 Pennsylvania Ave NW
Washington, DC 20460-0001
coomber.robert@epa.gov

March 1, 2022

RE: Demand to Bargain Pursuant to Article 24 of the Interim Collective Bargaining Agreement, Supplemental Agreements and Other Negotiations During the Life and Term of this Agreement and Designated Representatives of the Parties of the Master Collective Bargaining Agreement and Information Request

Dear Mr. Coomber:

The American Federation of Government Employees (AFGE) Council 238 demands to bargain, pursuant to Article 24, Supplemental Agreements and Other Negotiations During the Life and Term of this Agreement and Designated Representatives of the Parties of the Master Collective Bargaining Agreement between the United States Environmental Protection Agency and the AFGE.

Section 1. The parties agree that the circumstances under which negotiations are appropriate during the life and term of this agreement are included and described below:

- A. At the Union's option, when the Employer, at any level, proposes a change in the substance of an otherwise negotiable personnel policy, practice or working condition not part of this agreement; and
- B. At the Union's option, when the Employer, at any level, exercises a management right and the impact of that decision creates adverse impact on bargaining unit employees.

In order to protect the Union's right to negotiate AFGE is making the following demands:

1. AFGE invokes its right to bargain over, the implementation of the Environmental Implementation Fellows (EIF) Appointments.

2. AFGE requests that the Agency maintain the status quo during such bargaining process.

AFGE Council 238 further requests the following information under 5 U.S.C. § 7114 (b)(4). The Union seeks the following information based on details provide during the February 23, 2022, briefing on the EIF Appointments as well as information contained in the draft Environmental Implementation Fellows (EIF) Appointments HR Bulletin provided via email also on February 23, 2022.

For the purpose of this request, the term “information, documents, and other materials” (hereinafter “materials”) includes, but is not limited to, any typewritten or handwritten memoranda, reports, summaries, notes, charts, computer database materials, issuances, advisory letters, audio and/or video recordings, or other data in whatever form it might appear.

1. Provide the staffing plan for each program office where one currently exists that contains bargaining unit employees represented by AFGE Council 238. The staffing plan should include details at the national program level as well as the specific regional division and office levels.
2. The draft EIF Bulletin contains specific statements which lead to the following questions.
 - a. *“Initial appointments of EIFs are for a term of six (6) months to two (2) years.”*
 - i. What Agency official decides the length of each appointment?
 - ii. Provide a list of the criteria for determining the length of each appointment.
 - b. *“Unless extended, appointments to this program will expire without renewal upon reaching the not-to-exceed date of the initial appointment. Appointments may not exceed a total of four years.”*
 - i. What Agency official decides if the appointment will be extended?
 - ii. Provide the criteria for determining extension is appropriate.
 - c. *“The entire duration of the EIFs appointment in the excepted service is a trial period. As a condition of employment, an EIFs appointment will expire upon reaching the not-to-exceed date of the appointment.”*
 - i. Provide the protections for these employees that extend beyond those currently in a probationary period.

- d. *“An appointment made under the provisions of this policy must be related to work on a new or recent law, regulation, or Executive Order. Recent, for the purpose of this policy, means 5 years or less.”*
- i. List all Laws, Regulations and EOs that currently fall under this provision.
 - ii. Provide a list of any and all staff (including name, grade, regional office, and program) previously or currently working on any of the Laws, Regulations and EOs listed in response to Question 2(d)(i).
- e. *“Program or regional offices wanting to use this appointing authority must provide a written justification to the servicing HR SSC identifying the new or recent authority, the date it became effective and an explanation regarding why the organization needs to use EIF program and not the existing workforce or standard recruitment options.”*
- i. Will these documents be public and be provided to the union?
- f. *“The EIF program seeks to bring top-tier talent into the Federal sector to meet the challenges associated with implementing new federal initiatives that require knowledge, skills and abilities the agency either does not possess or falls short of resourcing.”*
- i. How did the Agency determine that the expertise does not currently exist at EPA?
 - ii. What employees (both BUEs and non BUEs) were questioned?
 - iii. What analysis was conducted?
3. How will the Agency “post” these jobs to ensure veterans, people with disabilities, etc. have an equal opportunity? When would the Agency consider posting in USA Jobs not USA an acceptable notification when it has been a past practice across all Federal Agencies.
4. During the February 23, 2022 briefing, Agency officials stated there was no “recruitment plan” without a case file.
- a. Please explain what a “case file” consists of and provide a copy of all case files associated with EIF.

The Union’s particularized need for the above information is as follows:

- 1. The Union has a duty to fairly represent all AFGE bargaining unit employees (BUEs) within EPA. As such, the above requested information is necessary to determine the impact the EIF Appointments implementation may have on AFGE BUEs.

-
2. The Union also intends to bargain over hiring practices in upcoming Master Collective Bargaining Agreement negotiations. The above information is needed to correctly ascertain the Agency's current policies and positions on hiring practices to better enable the Union to develop negotiable proposals.
 3. The Union requires this information to fully understand the implications on bargaining unit employees and to assess whether a group grievance is necessary.

The Union requests that the Agency provide this information via email by no later than close of business on **Friday, March 11, 2022**.

Should you not completely satisfy this information request under the authority cited above, please provide me with the name and title of the person denying this request along with a written statement of the authority and reason(s) relied upon for not releasing each specific item denied. In the event you deny any portion of the request, please provide the remaining information. AFGE reserves the right to make any necessary supplemental requests for information.

If you need additional information or clarification, please feel free to contact me.

Sincerely,
Marie Owens Powell
Marie Owens Powell
President
AFGE Council 238
Owens.mariejr@epa.gov
215-814-3384

Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 3/1/2022 8:46:41 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Owens Powell, Marie [Owens.Mariejr@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: Ground Rules
Attachments: Ground Rules Exchange of Proposals 03012022.docx

Hi Bob- we want to pass this by you to see if this has any potential as a compromise for exchange of articles. Let me know.

By the way we do not have any other Grounds Rules sessions scheduled for this week, I think it is important that we meet at least one more time this week.

Thanks

Joyce

Joyce A. Howell
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AFGE Ground Rules Proposal Exchange

Version 1

03-01-2022

Up to 100% official time for MCBA Workgroup leaders and members for MCBA preparation work from March 25, 2022 through April 22, 2022. On Friday, April 22, 2022 both parties will provide draft proposals on each of the Articles to be negotiated. The parties agree to negotiate (1) Workforce Development (including Staffing/Career Ladder Promotions/Reassignment/Detail/Merit Promotion/PD and Classification; (2) Union Rights, Duties and Activities (including official time, use of facilities and Unit Recognition) and (3) Negotiated Grievance Procedure and Arbitration first. Negotiations of these first three Articles will start from AFGE's proposals. The second set of three (3) Articles will be identified by the Agency and will start from the Agency's proposals. The order of the remaining Articles for negotiation will be mutually agree upon.

Any changes/new laws, regulations, policy, guidance and/or rulings from the FLRA/FSIP will allow for submitted proposals to be amended by either party.

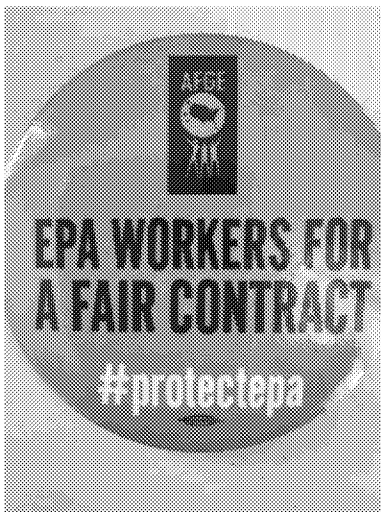
Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 3/21/2022 8:53:31 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Breslin, John [breslin.john@epa.gov]; Smith, Kathryn [Smith.Kathryn@epa.gov]
CC: John Howard [John.Howard@afge.org]; Joyce Howell [joycehowell@afge3631.org]; Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Owens Powell, Marie [Owens.Mariejr@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: AFGE counter- Ground Rules
Attachments: AFGE MCBA Ground Rules 03212022.docx

Thank you

Joyce

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Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 3/24/2022 3:38:40 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Howell, Joyce [Howell.Joyce@epa.gov]
Subject: Meeting Request?

Bob,

Do you have an update on AFGE's meeting request regarding the MCBA Ground Rules? I think this meeting is very timely given the call I just received from Janet McCabe in which she thanked AFGE for its recent hard work during our bargaining.

Marie Owens Powell

President

AFGE Council 238

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Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 2/22/2022 8:34:01 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Smith, Kathryn [Smith.Kathryn@epa.gov]; Bracewell, Terrell [Bracewell.Terrell.R@epa.gov]
CC: Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Owens Powell, Marie [Owens.Mariejr@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: AFGE Ground Rules proposal 2.22.2022
Attachments: AFGE MCBA Ground Rules 022222.docx

Thank you,

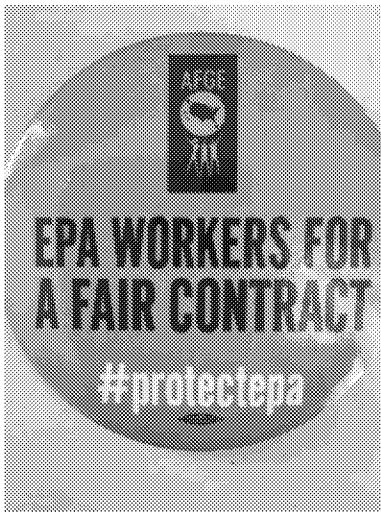
Joyce

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Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 4/11/2022 7:51:50 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Nicole Cantello [timeisanabstract@gmail.com]; Owens Powell, Marie [Owens.Mariejr@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: AFGE Ground Rules counter
Attachments: AFGE MCBA Ground Rules 04112022.docx

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Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 4/13/2022 7:55:50 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]
CC: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: MCBA Ground Rules Cleaned Up
Attachments: AFGE-EPA MCBA Ground Rules - Agreement Pending Cleanup 04132022.docx

Bob,

Please take one last look and accept all changes, convert to signable pdf and send back to Joyce after you sign.

Thanks

Marie Owens Powell

President

AFGE Council 238

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Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 4/14/2022 3:16:21 PM
To: Howell, Joyce [Howell.Joyce@epa.gov]; Coomber, Robert [coomber.robert@epa.gov]
CC: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: MCBA Negotiation Schedule

I will be sending Teams meetings to each of you for the upcoming MCBA negotiations. I will send a recurring meeting for both morning and afternoon sessions (lunch 1 pm) through the end of the calendar year.

I will also send a 4 hour meeting on Wednesdays during non-negotiating weeks.

Marie Owens Powell

President

AFGE Council 238

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Message

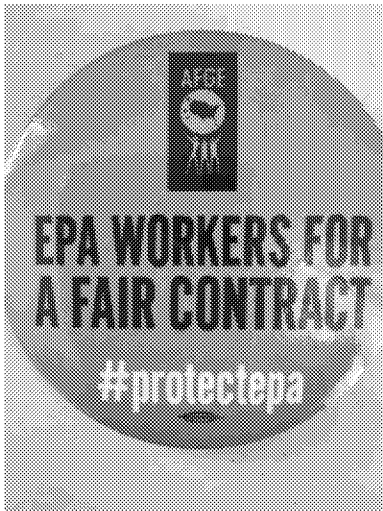
From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 4/15/2022 3:26:57 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: Ground Rules MOU- one other typo found
Attachments: AFGE-EPA MCBA Ground Rules - Agreement Pending Cleanup.jah.docx

The section roman numerals were off- we skipped X. – I made te changes in two place- in the h section title and in a paragraph reference- you will see the redline.

Thanks

Joyce

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Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 4/19/2022 2:00:16 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: Ground Rules

Still a bunch of typos.

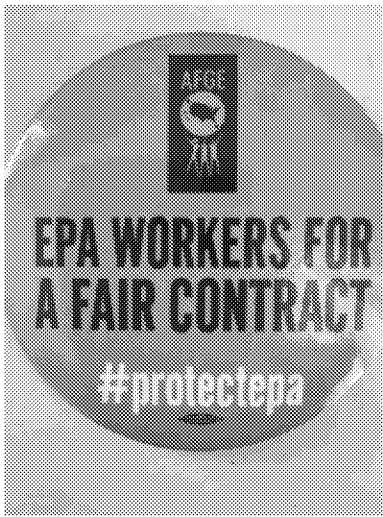
Section 1 paragraph 2- MOUt – delete the t
Section 1 paragraph 9- agency =Agency
Section II paragraph 5(a) – needs period at the end
Section II 5(b) representative = representatives
Section II Paragraph 9 3rd line agency = Agency
Section V- paragraph 1- first line 5 U.S.C 7134 = 5 U.S.C § 7134
Fourth line- there is an orphaned “b.” should be deleted
Section IX paragraph 9 7114(c) = 5 U.S.C § 7114(c)
Section IX. A. Paragraph 10 second to last line 7114(c) = 5 U.S.C. § 7114(c)
Section IX C,. Paragraph 1- (3)business = (3) business

I will be correcting the list of names to add region and aa ship

Thanks

Joyce

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Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 4/20/2022 8:44:23 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Nicole Cantello [timeisanabstract@gmail.com]; Owens Powell, Marie [Owens.Mariejr@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: AFGE- MCBA Articles requiring Technical Changes only
Attachments: TECH CORRECTIONS - AFGE-Remote-Work-Article-1.pdf; TECH CORRECTIONS -AFGE-Telework-Article.pdf; TECH CORRECTIONS-AFGE-Work-Schedules-Article.pdf

Hi Bob- Below are the two articles AFGE identified that require only technical changes.

- Reduction in Force and Transfer of Function (except updates to include Government Employee Fair Treatment Act, 31 U.S.C. § 1341)
- Employee Pantry/Kitchenette Facilities (except updates to include accessibility and COVID related changes)

The proposed technical changes to the telework, remote work and work schedules articles are contained as comments in the .pdf documents attached. However, in addition to those noted in the document, we have two other proposed technical changes:

For the telework article, to use the same language as the remote work article: **Change** “Providing employee with signed copy of the telework agreement once completed;”

To read “The supervisor shall provide the employee with a signed copy of the Telework Agreement.”

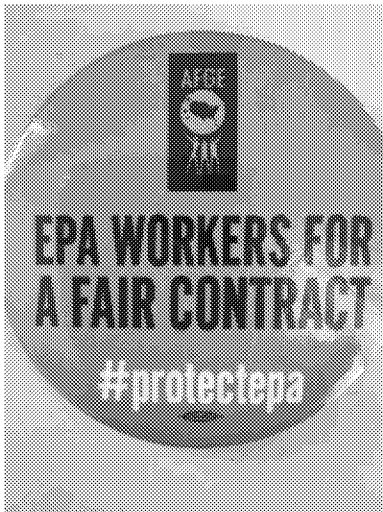
For the remote work form- I have previously raised this issue:

On the remote work application form, the box where the applicant explains how the applicant can perform their duties from the RWL allows you to use as much space as you need, i.e., the box extends. However, if the document is printed the expanded box is cut off. The form needs to be changed so that the entire justification is visible when the form is printed.

Thank you

Joyce

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Message

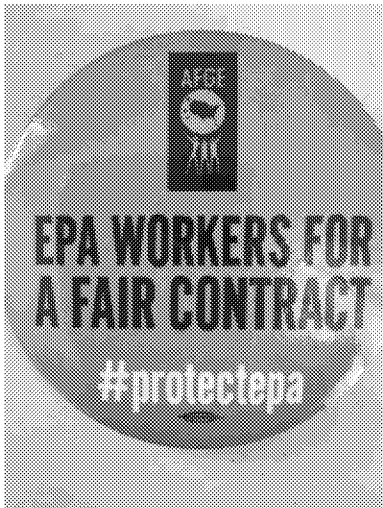
From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 4/29/2022 5:01:54 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: Ground Rules MOU

Hi Bob- by our count, we have 27 hours of official time left over from week 1 and 8 hours left over from this week. Can we use them if necessary for future needs in the remaining 4 weeks?

Thanks

Joyce

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Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 6/3/2022 9:26:02 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Owens Powell, Marie [Owens.Mariejr@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]
Subject: AFGE MCBA Proposals (1 of 3)
Attachments: AFGE Staffing and Promotions 06032022.docx; AFGE Alcohol Drug Free Workplace 06032022.docx; AFGE Awards 06032022.docx; AFGE Childcare Facilities 06032022.docx; AFGE Computer Displays and Workstations 06032022.docx; AFGE Contracting Out 06032022.docx; AFGE Definitions 06032022.docx; AFGE Details 06032022.docx; AFGE Disciplinary and Adverse Actions 06032022.docx; AFGE Discrimination Harassment 06032022.docx; AFGE Diversity Equity Inclusion and Accessibility 06032022.docx; AFGE Dues Deduction 06032022.docx; AFGE Duration 06032022.docx

Bob,

I will send the attachments through three separate emails. Attached are AFGE's proposed Articles for the upcoming MCBA negotiations. AFGE proposes the Preamble and the Diversity, Equity, Inclusion and Accessibility Article for the start of negotiations. I will schedule time with you to discuss the four options (2 AFGE and 2 Agency) and the order which we will negotiate.

As discussed earlier today, below is AFGE's negotiating team broken down by "Table Team". Joyce Howell is the AFGE Chief Negotiator, I will serve as the back up Chief Negotiator and Tricia Paff will serve as the AFGE Notetaker. As such, Joyce, Tricia and myself will be at the "table" for each Article as well as the following AFGE representatives:

Promotions:	Nicole, Undine, Dianna
Details	Nicole, Undine, Britta
Merit Promotion	Nicole, Undine, Dianna
PD/Classifications	Nicole, Undine, Dianna
Reassignments & Reorgs	Nicole, Undine, Britta
Union Rights, Duties & Activities	Bethany, Nate, Dianna
Diversity & Inclusion	Dianna, Nate, Nicole
Leave	Bethany, Tricia, Britta
Employee Rights	Ed, Bethany, Nate
H&S	Ed, Dianna, Britta
Field Work & Emergency Response	Bethany, Ed
Awards	Bethany, Ed, Nate
Scientific Integrity	Undine, Bethany, Ed
PARs	Nate, Bethany
Human Resource Development (Career/Professional Development, Mentoring and Training)	
Dianna, Bethany,	
Overtime	Dianna, Bethany, Tricia
Discipline & Adverse Actions	Nicole, Ed, Nate
Supplemental Agreements/Mid Term Bargaining	Undine, Britta, Bethany
Dues Deductions	Dianna, Nicole
Computer Displays and Work Stations	Tricia, Bethany
Discrimination & Harassment	Nate, Bethany, Dianna
Reasonable Accommodations	Nicole, Bethany, Nate
Selective Placement	Bethany
Labor/Management Relations	Ed, Nicole, Nate

Employee Counseling & Assistance
Alcohol & Drug Free Workplace
Definitions
Preamble
Childcare Facilities
Fitness & Wellness
Kitchenettes
Contracting Out
EEO
Grievance & Arbitration
Duration
Misc Facilities

Bethany, Nicole, Tricia
Bethany, Nicole, Tricia
Nicole, Bethany
Bethany, Undine
Bethany, Ed
Bethany, Ed
Bethany, Ed
Tricia, Bethany,
Bethany, Ed
Nicole, Undine, Bethany
Bethany, Ed
Bethany, Ed

Marie Owens Powell

President

AFGE Council 238

PHONE: 215-814-3384

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<http://www.joinafge.org/>



Staffing and Promotions

Section I. Career Ladder Promotions

- A. The Agency will provide appropriate and regular opportunities for employees to develop and advance in their careers.
- B. Employees in career ladder positions will be given maximum opportunity to reach the full potential of their assigned career ladders. This will include assignment of work equal to that of their colleagues. Upon placing an employee in a career ladder position, the supervisor will discuss the job requirements and expectations for the employee to reach the next higher level. The supervisor will hold these discussions at each level of the employee's progression including but not limited to mid and end of year performance reviews within the career ladder. The supervisor will provide written feedback that includes expectations and requirements to achieve the next higher grade to the employee.
- C. Career ladders are not automatic; an acceptable level of performance in their current position must be demonstrated for progression.
- D. At the time an employee meets time-in-grade and any other legal promotion requirements, the supervisor will make a decision to promote or not to promote. This decision will be made at least one pay period prior to the employee's time in grade requirements. The supervisor will inform the employee of the decision in writing and within two days of the decision.
 - 1. If the supervisor determines to promote the employee, the supervisor will submit the necessary paperwork to process the promotion within the first pay period of the employee meeting time in grade requirements.
 - 2. If the supervisor determines not to promote the employee, the supervisor will provide the employee with a written justification of the decision and identify measures to achieve the promotion.
- E. The supervisor will periodically provide feedback to the employee about their performance in the career ladder position.
- F. Employees not meeting the criteria for promotion at any time will be counseled by their supervisor immediately regarding areas needing improvement before the promotion can be denied.

Section II. Upward Mobility Program

The Agency will create an Upward Mobility Program. The Upward Mobility Program will offer paths for employees to pursue opportunities and allow successful crossover opportunities for growth as offered by career ladder positions. The Agency shall notify all employees of the Upward Mobility Program annually through a mass mailer. The Agency will also notify all new employees during employee onboarding meetings. The Agency shall document this provision of

information and make it available to the Union. The Agency will use the Upward Mobility Program to provide a broad base for the selection of personnel for technical, administrative, program, and specialist positions, and thus diversify the employee population in those careers and to increase job satisfaction and ability of the Agency to retain staff.

- A. The Upward Mobility Program will consist of four (4) components: advanced skills training, on the job training, career and educational counseling, and job restructuring. Eligibility criteria and requirements in the program are:
 - 1. Presently serving under a permanent competitive position; and,
 - 2. Currently in a single interval job series at or below GS-10.
- B. The Agency will ensure that the Upward Mobility Program includes the opportunity for participating employees to explore career interests and to assist in developing career plans. This will include the provision of career counseling to all participating employees.
- C. General Education and Basic Skills – The Agency will provide eligible employees with:
 - 1. developmental assignments or opportunities for self-development;
 - 2. provision of career and educational information;
 - 3. both formal and on-the job targeted skills training
 - 4. opportunities to improve current skills; and
 - 5. use of existing training platforms utilized by the Agency. If training is required to qualify eligible employees for promotions, employees must be allowed to complete the training opportunity within six months of employee request.
- D. Upward Mobility Positions – The Parties will engage in a joint labor management process to identify positions to be included in the Upward Mobility Program. The positions may be ones which are suitable for redesign or can be identified as “developmental” or a new position that will be created as the result of new allocations or employee resignations.
- E. The Parties will work together to identify “Bridge” and “Target” positions which the Agency will fill annually.
 - 1. “Bridge” positions are positions which combine administrative tasks from the current position and technical tasks from the “Target” position. The “Bridge” position may be a new or an existing position and is designated as a quasi-technical position which has a related two grade interval as the “Target” position.
 - 2. “Target” positions are positions for which an Upward Mobility Program participant will qualify upon successful completion of a prescribed period (usually one year) in a program of formal and on-the-job training. The promotion potential must be specified in the Upward Mobility position announcement and identified in the position description.

3. Upward Mobility Positions must be advertised for at least 15 working days as part of the program and the vacancy announcement clearly labeled “Upward Mobility”.
- F. The Agency will provide all Upward Mobility eligible employees with a Career Development Plan. The plan must include regular on-the-job experience, formal education and/or training necessary to ensure successful performance in the position. It must be written by the employee and their supervisor and completed within 30 days of the establishment of the employee’s status as an Upward Mobility participant.
 - G. The length of the Upward Mobility Program for an employee will be one calendar year from the date of placement of an employee in the “Bridge” position in the Upward Mobility Program. “Bridge” positions will provide an opportunity for employees to learn and demonstrate the knowledge, skills, and abilities to perform the duties of the “Target” position. Upward Mobility participants who successfully complete the training outlined in the Career Development Plan will be assigned non-competitively to the “Target” positions.
 - H. If the Agency determines an employee is unable to perform the duties of the “Target” position, it will provide a written justification to the participant within two (2) days of the decision. The participant may choose to leave the program or remain in the “Bridge” position for one more year and be evaluated again at the end of that year. If the employee remains unsuccessful after the second year, they will return to their prior position.
 - I. Evaluation of Upward Mobility Participant Progress – Supervisors will discuss the performance plan with the employee and provide the employee draft written appraisals every three months. The supervisor will give the employee a copy of the final performance plan and ask the program participant to sign and date. The due dates of the evaluation reports will be noted on the Career Development Plan.
 - J. The Agency must provide its complete and final Upward Mobility Program Evaluation and Reports to AFGE by October 15th of each year with the following information:
 1. Accomplishments –the job titles and number of Upward Mobility program positions, the names and number of employees given formal career counseling; the names and number of employees covered by the Upward Mobility Program who received formal advanced training/On the Job training and the names and number of employees selected for Upward Mobility positions.
 2. Plans for the upcoming fiscal year: Numbers, position title, series and grade level of the position(s) to be designated as “Target” positions for the Upward Mobility Program; and plans for providing counseling and training to employees on the program as well as employees covered by the Upward Mobility Program.

Section III. Career Ladder Promotions Correction

The goal of this Article is to amend upward career ladder positions where the qualifications support the next higher grade.

- A. Current Agency positions that are career ladder to the GS 12 ceiling shall be amended to GS 13 ceiling. To achieve this goal, each year for the next four (4) years the Agency will promote no less than:

Year 1 – 20% of each of the GS 12 pool of employees in each Office/Division;
Year 2 – 30% of each of the GS 12 pool of employees in each Office/Division;
Year 3 – 50% of each of the GS 12 pool of employees in each Office/Division; and
Year 4 – all remaining GS 12 employees with time in grade eligibility in each Office/Division will be promoted.

- B. Current Agency positions that are career ladder to the GS 13 ceiling shall be amended to GS 14 ceiling. To achieve this goal, each year for the next four (4) years the Agency will promote no less than:

Year 1 – 20% of each of the GS 13 pool of employees in each Office/Division;
Year 2 – 30% of each of the GS 13 pool of employees in each Office/Division;
Year 3 – 50% of each of the GS 13 pool of employees in each Office/Division; and
Year 4 – all remaining GS 13 employees with time in grade eligibility in each Office/Division will be promoted.

- C. Current Agency positions that are career ladder to the GS 14 ceiling shall be amended to GS 15 ceiling. To achieve this goal, each year for the next four (4) years the Agency will promote no less than:

Year 1 – 20% of each of the GS 14 pool of employees in each Office/Division;
Year 2 – 30% of each of the GS 14 pool of employees in each Office/Division;
Year 3 – 50% of each of the GS 14 pool of employees in each Office/Division; and
Year 4 – all remaining GS 14 employees with time in grade eligibility in each Office/Division will be promoted.

- D. To apply for the above, employees must have achieved the top of the career ladder (GS 12, 13 or 14 level, respectively) for at least three (3) years at the Agency and at least have achieved an “effective” performance rating (or equivalent) for three years (3).

Individuals will nominate themselves for consideration by submitting a federal style resume to their Office/Division Director. The Office/Division will create a panel of equal numbers of bargaining unit employees and non-bargaining unit employees that work within the Division. The panel will review resumes, conduct interviews and rank applicants. The Office/Division Director will make the final decision regarding selections considering the ranking of the panel and promote the highest ranking applicant(s).

- E. The number of employees promoted will correspond to the percentage of employees in Section III A, B and C respectively.

- F. Decisions regarding promotions shall be subject to the grievance procedures set forth in this MCBA, including but not limited to decisions or determinations about eligibility, selection, or denial.
- G. When a supervisor determines not to promote the employee the supervisor will provide the employee with a written justification of the decision and identify measures to achieve the promotion.
- H. The supervisor will periodically provide feedback to the employee about their performance in the career ladder position. Employees not meeting the criteria for promotion at any time will be counseled by their supervisor immediately regarding areas needing improvement before the promotion can be denied.
- I. Within 30 days of the end of each fiscal year, the Agency shall provide the Union with a list of non-supervisory career ladder GS 12, 13 and 14 employees which would be eligible under Section III of the Article.
- J. Within 30 days of the effective date of this MCBA, and at the beginning of each fiscal year thereafter, the Agency shall review staffing plans and determine the number and percentage of GS-13, GS-14, and GS-15 positions therein, as of six months prior to the effective date of this Article and provide such information concurrently to the union.
- K. Any non-supervisory GS 13, 14 or 15 positions that become vacant due to attrition or otherwise, shall be filled within thirty (30) days with an eligible non-supervisory GS 12, 13 or 14 respectively.
- L. Prior to any decision to eliminate a non-supervisory merit promotion position, the Agency shall provide in writing the factual basis for eliminating the position, how it relates to the Agency's mission and the existing staffing plan, and be subject to grievance procedures set forth in this MCBA.

Section IV. Subject Matter Experts

- A. Within 60 days from the effective date of this Article and every fiscal year thereafter, the Agency shall provide to the Union no later than October 1st a list of:
 - 1. Subject matter experts within the Agency;
 - 2. Expected vacancies in SME positions in the upcoming fiscal year; and
 - 3. Planned newly created SME positions to be announced within the next fiscal year.
- B. The procedures used in identifying areas that will be considered for "subject matter experts" shall not be limited by Agency funding constraints.
- C. All actions taken to fill SME positions will comply with the Merit Promotion section of this Article. The Agency shall apply competitive procedures to all SME vacancies.

- D. The minimum area of consideration for SME positions shall be the local commuting area of the Office/Region. Announcements for SME positions shall follow the requirements in the Promotions Article of this MCBA.
- E. Any employee who applied and is not selected for an SME position is entitled to the following information upon request:
1. Employee eligibility and ranking;
 2. Whether the Employee was referred and was one of those in the group from which the selection was made;
 3. Any deficiencies which prevented selection;
 4. Additional training, experience, etc. which would improve employee's qualification for SME position; and
 5. Who was selected for the position.

Awards

Section I. Introduction and Objective

The EPA award program reflects the Agency's commitment to promote continuous improvement in performance through monetary and non-monetary awards intended to motivate and reward employees to continually strive for excellence.

The Parties agree that the timely recognition of unit employee's outstanding achievements contribute to the efficiency of the work force and the accomplishment of the Agency's mission. It is recognized that the timely use of both monetary and non-monetary awards has a significant effect on employee morale, motivation, performance, and retention.

The Agency award program is an incentive program that provides objective recognition based on accurate accounts of employee achievements that contribute to the Agency's mission without regard to personal favoritism.

Section II. Authorities

In the administration of all matters covered by this Article, the Union, the Agency and employees shall be governed by 5 C.F.R Parts 451 and 531; EPA Order 3130, this Agreement, and all other applicable policies and procedures.

Section III. Additional Provisions

Recognition will be granted in accordance with this Article, and all other applicable policies and procedures:

- A. National EPA Awards Board. Board Members have the responsibility of reviewing each nomination on its merits; being knowledgeable about their office's nominations yet maintaining impartiality; considering Agencywide interests; and interfacing with their local Awards Coordinators to ensure that their office's nominations meet the criteria.
 1. EPA Awards Board Representatives. The EPA Awards Board Representatives shall include at least one AFGE representative. AFGE Council 238 will appoint AFGE's Award Board Representative(s) to the Agency's National Awards Board. AFGE is responsible for selecting and backfilling AFGE's Awards Board Representatives.
 2. AFGE's Awards Board Representative shall have equal standing with voting rights.
 3. The Parties agree that National Award Board representatives will be free from conflicts of interest.
 4. If either party identifies an appearance of a conflict of interest and can reasonably demonstrate that a conflict exists, that party can request that Awards Board Representative be recused from the board.
 5. The National Awards Board Members will review nominations to ensure that Awards granted are commensurate with employee(s) level of effort, fair, equitable (not based on gender) and balanced.

6. The National Award Board does not have the right or authority to create, deny, increase, decrease, or fund Awards under any circumstance.
- B. Awards Budgets. At the beginning of each appraisal period, or as soon as available, information concerning the amount and allocation of the awards budget will be provided to AFGE Council 238 President and all AFGE Local Presidents. At the local level, if there is a further reallocation of the awards budget, the Union will be provided an opportunity for input/feedback during this process. The Union will also be provided with periodic updates on the expenditure of awards budgets.
- C. There are National Honor Awards which are not considered by the National Awards Board. Such Awards are paneled separately. Special awards panels will include representative(s) from AFGE Council 238. Currently there are the following National Honor Award categories which are not considered by the Board including by not limited to the following list. If at any time the Agency modifies the following list, AFGE Council 238 will be notified at least two pay periods before such change. AFGE Council 238 will have a representative(s) on any new special award panel.
1. Barbara M. Metzger Environmental Data Quality Assurance Manager Award
 2. Contracts Management Awards
 3. Joseph Seifter Award for Human Health Risk Assessment
 4. James W. Akerman Award for Ecological Risk Assessment
 5. EPA Science Achievement Awards in the categories of Air Quality, Biology/Ecology, Chemistry, Earth Sciences, Engineering, Environmental Economics, Health Sciences, Waste Management and Water Quality
 6. Award for Sustained Outstanding Contributions to International Environmental Protection
 7. MaryAnn Froehlich Financial Stewardship Award
 8. Exemplary Leadership in Records Management Award
 9. Award for Outstanding Achievement in Enhancing EPA's Culture of Scientific Integrity
 10. Matthew Leopard Award for Leadership in Environmental Information Management
 11. Award for Outstanding Contributions to Advancing EPA's Risk Communication
- D. Peer Awards. Nominations for Peer awards must be submitted, in writing, to a management official that is in the chain of command for the nominee or the nominator. The management official shall provide a written response approving or disapproving the Peer award within 15 calendar days to the nominator. Peer awards will be published by the Agency within 30 days of approval on the Agency's mail, bulletin board or similar system.
- E. Self-nominations. The Agency values superior accomplishments and recognizes that Agency managers may not always be aware of each superior accomplishment of their subordinates. In the spirit of equality and inclusion, the Agency encourages employees to self-nominate superior accomplishments at any time during the year, even if outside the normal annual award cycle. Self-nominations will be submitted by the employee in writing to the first line supervisor. The first-line supervisor shall forward the self-nomination to the deciding officials and the written decision of the deciding official will be provided to the employee within 30 calendar days after submission. Employees are limited to one self-nomination per fiscal year.

- F. All Employee award information, regardless of BUE status, including names, award types and dollar amounts will be provided to the Council President and local Union presidents on a quarterly basis. Such information will be electronically sortable by organization and location. This data will be treated by the Union in a confidential manner.

Section IV. Local Awards Board.

- A. There shall be a Local Awards Board at each Region or Program Office. The procedures and operations of such award boards will be locally determined, within the following parameters:
 - 1. Award boards may vary in function up to and including recommendation of awards.
 - 2. Award boards will evaluate the award of Quality Step Increases (QSIs) when there are more eligible employees than QSIs available.
 - 3. Local Award Boards shall include representation from AFGE.
 - 4. Board procedures may supplement but not conflict with the above authorities.
- B. The AFGE Local will appoint representatives to the Local Awards Board/Panel. Such representatives will have equal standing, the ability to provide feedback, comment, and discuss nominations as well as vote on award selections.
- C. The Local Award Board does not have the right or authority to create, deny, increase, decrease, or fund Awards under any circumstance.

Section V. Transparency

The Agency will provide award information for all Agency employees, including names, award types (national or local; monetary, non-monetary, time off award), dollar amounts (if any) and the citation (justification) will be posted to the Agency intranet site no less than one (1) a week after the award is given in a format that is sortable by office. Each posting of this information on the Agency intranet site will remain on the site for no less than five (5) years.

Childcare Facilities

Section I. General

- A. The parties recognize that childcare at or near the work site is a substantial benefit and convenience for employees. The parties agree to encourage, within resources available, the establishment and maintenance of such facilities.
- B. The Agency agrees to provide childcare at reasonable cost to employees where on-site childcare programs exist.
- C. The Agency will ensure that employees will have equal access where on-site childcare programs exist, in accordance with established criteria, to any childcare facility established for the benefit of employees.
- D. The Parties agree to work with each other to evaluate options for childcare services and arrangements. If the Agency assembles a workgroup to study the feasibility of providing or participating in on-site childcare facilities, this workgroup will include an AFGE representative. The Parties agree to work together to conduct a survey of all employees within six months of the effective date of this Article to determine the need for on-site childcare facilities. If there is a demonstrated need, the Parties agree to work together to identify childcare services that comply with all Federal requirements.
- E. The Agency agrees to sponsor an annual workshop to provide information to employees about available childcare resources. Employees shall be permitted to attend during duty time. The Agency will provide all employees with information (program materials) regarding the Child Care Subsidy Program on an annual basis. These program materials will include Application Forms and Child Care Subsidy Agreement Forms.
- F. Except as provided above, additional provisions for childcare facilities are a matter for local level negotiations. Where the childcare facility is co-located in Federal space and AFGE representative will participate in negotiations

Computer Displays and Workstations

Section I. Acquisition and Design

Within the Agency's infrastructure there are many positions which require extended periods of time of sitting and working before a desktop and/or laptop computer which includes monitors for visual display of data.

- A. The Parties agree ergonomic and environmental factors can impact the health, safety, and comfort of computer users. The Agency will provide employees information about ergonomic hazards and how to prevent ergonomics related injuries. The Agency will provide, as it replaces existing equipment (chairs, tables, workstations, etc.) equipment which meets ergonomic design criteria. The Agency also will provide training when new equipment is purchased on how to operate the equipment safely and properly. When acquiring new equipment, the Agency will:
 - 1. to the maximum extent practical, provide keyboards, worktables, and chairs that are height-adjustable and provide proper back support that is suitable for long term use;
 - 2. Consulting with employees, about equipment and furniture prior to purchase;
 - 3. Provide work spaces that are properly illuminated to ensure visual comfort to computer users while providing adequate lighting;
 - 4. Implement effectively designed workstation layouts;
 - 5. Educate employees about the proper and safe operation of computers and displays, including the value of interspersing prolonged periods of computer use with other work tasks requiring less intensive visual concentration. Where there are prolonged periods of computer those employees will be given a rest break;
 - 6. Review workstations as a regular part of safety and health inspections.
- B. The Agency will provide job appropriate tables, workstations, lighting and access to general office equipment such as printers, photocopy equipment, facsimile machines, audiovisual equipment, headsets for both telephones and computers, replacement ear pads and tools for minor modifications to their assigned office equipment in the office where facilities services do not have the capacity to provide such service.

Section II. Ergonomics

The Agency agrees to use corrective measures to reduce the effects of any possible adverse factors on employees and/or their conditions of employment associated with computers and workstations, such as but not limited to:

- A. Adjustable chairs with the capacity to allow personal adjustment to suit each employee will be provided to allow optimum comfort for heights, back and tension, and the minimum amount of physical stress for each employee. Chairs with high or low back, full length and half-length arms rest, or chairs without arms rests will be provided. The

Agency will ensure that chairs in the office are professionally cleaned every year and replaced when necessary but in no circumstance less than every 5 years unless the employee deems a full replacement is not necessary in writing.

- B. Height adjustable standing desks shall be provided for every workstation.
- C. The Agency will make every reasonable effort to reduce sources of glare surrounding employees' workstation by:
 - 1. Positioning desktop monitors at the proper angle to the windows;
 - 2. Placement of monitors near an unshaded or uncovered window will be avoided;
 - 3. Provide hoods and glare filters for stand-alone monitors when requested; and
 - 4. Working surfaces and the paneling around the workstation will be low reflecting.
- D. Adjustments to office illumination may be made, consistent with GSA standards, when requested.
- E. Workstations shall be adjustable so that the angle of employees' forearms is proper for typing to minimize any adverse effects of repetitive motions.
- F. Provide footrests and wrist rests at workstations when requested.
- G. Avoid placement of an employee directly under an air vent.
- H. Employees who suspect that an adverse health effect is caused by using the workstation may report their condition to their supervisor. The Agency shall review the conditions reported by the employee and schedule an ergonomic assessment within 30 calendar days by a qualified professional. The Agency will provide equipment (chairs, tables, workstations, etc.) after the ergonomic assessment has been determined to be necessary to meet the employee's documented ergonomic need in an expeditious manner. Such assessment on its own will not trigger the Reasonable Accommodation process.

Nothing in the Section limits an employee's ability to seek a Reasonable Accommodation.

Section III. Government Furnished Equipment

- A. The Agency will provide the following government furnished equipment at all individual dedicated workstations in the office at the Official Agency Worksite:
 - 1. Height adjustable standing desk that is lightweight, sturdy and easily adjustable by the employee;
 - 2. Adjustable chair as described in section 4 below;
 - 3. Up to two adjustable free-standing monitors;
 - 4. Docking station, if needed;
 - 5. Keyboard (standard model unless ergonomic device is requested);
 - 6. Mouse (standard model unless ergonomic device is requested);
 - 7. Headset(s) compatible with computer and desk phone;
 - 8. Webcam to facilitate communication w/remote employees, if needed;

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9. Desk lamp or built in task lighting;
10. Computer cooling fan when requested;
11. Desk phone with a dedicated phone number for each employee;
12. Internet/LAN connection;
13. Coat locker;
14. Locking storage (e.g., file cabinet, overhead storage bin); and
15. Bookshelf when requested.

B. Shared workstations are subject to local negotiations. Such shared workstations may be equipped with the following government furnished equipment:

1. Height adjustable standing desk that is lightweight, sturdy and easily adjustable by the employee;
2. Adjustable chair as described in below;
3. Up to two adjustable free-standing monitors;
4. Docking station, if needed;
5. Webcam to facilitate communication w/remote employees, if needed;
6. Desk lamp or built in task lighting;
7. Computer cooling fan when requested;
8. Desk phone with a dedicated phone number for each employee;
9. Internet/LAN connection;
10. Coat locker;
11. Locking storage (e.g., file cabinet, overhead storage bin); and
12. Bookshelf when requested.

Upon request, each employee will be provided an individual Keyboard (standard model unless an ergonomic device is requested), Mouse (standard model unless an ergonomic device is requested) and Headset(s) compatible with computer and desk phone. The Agency will provide storage space for those employees using shared workspace

C. The Agency will provide the following government furnished equipment and service at all Remote Work Locations (RWL):

1. Height adjustable standing desk that is lightweight and sturdy deemed appropriate by employee based on individual physical limitations and safety concerns;
2. Adjustable chair as described below;
3. Up to two adjustable free-standing monitors;
4. Docking station;
5. Keyboard (standard model unless ergonomic device is requested);
6. Mouse (standard model unless ergonomic device is requested);
7. Headset(s) compatible with computer and desk phone;
8. Webcam to facilitate communication w/ remote employees, if necessary;
9. Desk lamp or built in task lighting;
10. Computer cooling fan when requested;
11. Mobile device for field work and other professions that require a mobile device;
12. Dedicated Agency phone number;
13. Printer and printer supplies i.e., toner or annual stipend \$200; and
14. Assist employees with the ability to download drivers and software necessary to

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use personal printers/scanners.

D. The Agency will provide the following government furnished equipment at all official Alternate Work Locations (AWL):

1. Height adjustable standing desk, lightweight and sturdy deemed appropriate by the Agency and employee based on individual physical limitations and safety concerns;
2. Adjustable chair as described below;
3. Up to two adjustable free-standing monitors;
4. Docking station;
5. Keyboard (standard model unless ergonomic device is requested);
6. Mouse (standard model unless ergonomic device is requested);
7. Headset compatible with computer and desk phone;
8. Webcam to facilitate communication w/ remote employees;
9. Desk lamp or built in task lighting;
10. Computer cooling fan when requested;
11. Mobile device for field work and other professions that require a mobile device; and
12. Printer and printer supplies i.e., toner.

Section IV: Laptop and Desktop Computers

- A. The Agency shall provide at least one laptop or desktop computer to each employee. Employees shall not be required to use personal computers under any circumstances.
- B. To the maximum extent practicable, the Agency will distribute new computers so that the oldest computers will be replaced first. The Agency will provide refresh/replacement plans to AFGE at least 30 days before new devices (e.g., laptops, desktops, mobile devices, hot spots) are deployed at each office.
- C. The Agency recognizes that malfunctioning computers can have a detrimental effect on employee performance, employees are required to report malfunctioning computers to their supervisor or appropriate information systems office immediately.
- D. Supervisors or the appropriate information systems office shall repair the malfunctioning computer or issue a loaner/replacement device within 48 hours. The Agency shall maintain a supply of functional computers equivalent to five percent of the FTEs for this purpose.
- E. The Agency will document all incidents of malfunctioning computers by office centrally and provide a detailed (e.g., employee name, description of problem, length of time computer not usable, resolution provided) report to each Local AFGE President semi-annually.

Section V: Non-Waiver

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Nothing in this Article shall limit employees' rights under the Rehabilitation Act and Americans' with Disabilities Act.

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Contracting Out

Section I. General

- A. Management agrees to notify and consult with the Union regarding any anticipated review of a function for contracting out that affects all Agency staff with exception of SES and Political appointees, without regard to bargaining unit status, as required or allowed by law, rule or regulation, OMB Circular A-76 and its Supplement, and this Agreement. This notification to the Union only includes functions that currently are being performed by bargaining unit employees.
- B. Periodic Briefings will be held with Union officials at the local and national levels to provide the Union with information concerning any Agency decisions that may impact bargaining unit employees in implementing Office of Management and Budget (OMB) Circular A-76.
- C. Upon issuance, a solicitation to contract out used in the conduct of a cost comparison will be provided to the Union for comments. The Union shall be given the opportunity to review the document and submit comments before final receipt of offers from the private sector.
- D. The Agency agrees to minimize the need to separate employees by a contracting out decision. It will use attrition and restrict new hires to the maximum extent possible, in the event of a RIF and will place the affected employees in positions consistent with OPM regulations.

Section II.

In the event the Agency determines to conduct a cost analysis study pursuant to OMB Circular A-76, during the study, it will hold monthly meetings with affected bargaining unit employees for the purpose of providing information. The Union will participate in such meetings. The Parties can mutually agree to postpone or cancel any meeting. If there is no information to provide, the Agency will advise the employees and the Union via electronic mail and the meeting may be postponed or canceled.

Section III.

Management and the Union recognize the right of first refusal required by OMB Circular A-76 and its Supplement. Declining to exercise the right of first refusal due to displacement from contracting out shall not be deemed a waiver in any appeal or grievance rights employee might have under applicable law, regulation, and this Agreement.

Section IV.

Within 30 days of the effective date of this MCBA, the Agency will provide the Union with all existing Agency rules, regulations, and policies applicable to Agency sourcing decisions. The Agency must notify the Union of new Agency rules, regulations, and policies applicable to

sourcing decisions or the contracting process, and changes thereto, at the time they are proposed and at the time they are finalized.

Section V.

At least annually and upon request, the Agency shall provide the Union with a briefing on sourcing topics chosen by the Union.

Section VI.

- A. The Agency will provide the Union with a copy of all sourcing reports, (including sourcing reports, cost benefit analysis, 5-year staffing plan) reports, in a searchable electronic format, as submitted to OMB pursuant to federal law, regulation, policy, or OMB request, on the date submitted to OMB.
- B. The Agency will notify the Union when it enters into, or renews, a personal services contract, and provide the statutory authority relied upon for that contract.

Section VII. Inventories

- A. No later than the day that the notice of availability of the Agency's annual FAIR Act Inventory is posted in the Federal Register, the Agency shall provide to the Union:
 - 1. the Agency's FAIR Act Inventory in a sortable electronic format (such as Excel); and
 - 2. the full written justifications for all functions listed on the FAIR Act Inventory as "Commercial" with a Reason Code of A, E, or F; or as "Inherently Governmental".
- B. Inventory of Commercial Activities the Agency will maintain an inventory of all in-house commercial activities performed by the Agency and will update this inventory annually. The inventory will include information on all completed cost comparisons and will be made available to the Union upon request.
- C. No later than the day that the notice of availability of the Agency's annual Service Contract Inventory is posted in the Federal Register, the Agency shall provide to the Union the inventory in a sortable electronic format (such as Excel).

Section VIII. Public-Private Competitions

- A. Before the start of the preliminary planning process related to public-private competition, the Agency shall notify the Union and all potentially affected employees in writing of the decision to begin the public-private competition process. The Agency shall meet and confer with the Union regarding the proposed public-private competition.
- B. The Agency official responsible for making the source selection decision in the public-private competition shall, at least monthly from the beginning of preliminary planning to the final performance decision after resolution of all disputes, consult with the Union and consider the views of the Union on the development and preparation of the performance

work statement, the most efficient organization, and the public-private competition process.

- C. In addition to monthly consultation, the Agency shall provide the Union and affected employees with monthly briefings throughout the competition, from the beginning of preliminary planning to the final performance decision, and throughout the post-competition transition phase. Such briefings will include but not be limited to:
 - 1. Actions taken since the previous meeting, including electronic copies of all documents and communications sent to or shared with prospective/real bidders as a group (excluding proprietary and procurement sensitive information);
 - 2. Actions scheduled to take place before the next meeting;
 - 3. Schedule updates for the public-private competition process; and
 - 4. Identification of the employees' and Union's role in each action.
- D. The Agency shall provide the Union with all notifications sent to Congress regarding the public-private competition process on the same day these notices are provided to Congress.
- E. At the start of the preliminary planning process, the Agency shall provide at least 3 full day(s) of interactive training to Union representatives and all potentially affected employees on the public-private competition process, including (but not limited to) procedures, employee rights, roles of Agency personnel, and applicable laws, rules, and regulations. The Agency shall also provide the training participants with electronic copies of the training materials.
- F. All training resources, including classes and materials, provided to Agency personnel involved with a public-private competition will also be provided jointly to all representatives designated by the Union.
- G. The Agency shall provide the Union with the following materials at the beginning of the preliminary planning process:
 - 1. The tentative schedule for the A-76 process;
 - 2. A list of all functions being considered for inclusion in the A-76 study;
 - 3. A list of all potentially affected employees, including job title, current position description, grade, and work location;
 - 4. The Agency's rationale for reviewing the functions at issue in a public-private competition;
 - 5. All data upon which the decision to pursue the A-76 process was based;
 - 6. Other efficiency and/or business process reengineering methods considered before the public-private competition method was chosen; and
 - 7. All internal documentation directing that the public-private cost competition be undertaken.
- H. At the time of the formal public announcement of the competition start as required by the public-private competition process, the Agency will provide the Union with the

preliminary planning report and all preliminary planning documents, including those created by contracted sources.

- I. The Agency shall provide to the Union and potentially affected employees, in an electronic format, all documents and information made available to bidders on the same day such materials are made available to all bidders.
- J. The Agency shall provide the Union with the opportunity to comment on the documents and information received, and the Agency shall reply in writing to the Union's comments within 10 business days.
- K. The Agency will provide the Union and all affected employees written notification of the formal public announcement of a public-private competition at least 5 business days prior to the formal public announcement date. The notification shall include all information that is required to be contained in the formal public announcement.
- L. No later than the formal public announcement date of each public-private competition, the Agency shall provide to the Union the final list of bargaining unit employees who perform any part of the functions to be studied with the following information about each: job title, position description, grade, step, work unit, work location, supervisor, service computation date, length of Agency service, gender, veteran status, disability status, race, and age.
- M. Upon each formal public announcement of a public-private competition, the Agency shall give priority consideration to bargaining unit employees who perform the functions to be studied in hiring for other functions for which affected employees would likely be qualified. When making decisions on assignments for training, pursuant to this MCBA, the Agency shall give priority consideration to employees who perform the functions to be studied in the public-private competition.
- N. The Union will appoint a representative to serve on every Performance Work Statement (PWS) and Most Effective Organization (MEO) team formed under the public-private competition process. The Agency will train employee PWS and MEO team participants, including the Union participants concerning their duties and obligations under all laws, rules, and regulations. The Union's representative assigned to these teams will sign the same non-disclosure agreement and be bound by the same obligations to protect confidential information regarding the contracting out process as all other members.
- O. Time spent participating on these teams will not be considered official time.
- P. If the A-76 competition involves a function performed in more than one geographic location, the Union may appoint a representative to each of the teams from each geographic location. In addition, if the A-76 competition involves more than one function, the Union may appoint a representative to each team from each function.
- Q. The Union's representatives to these teams will be considered full members of these teams and may not be removed from the teams or excluded from any activities of the teams.

- R. The Agency shall provide the Union seven (7) days advance notification of and the opportunity to participate in all meetings, electronic conferences, site visits, conferences, and/or debriefing sessions with actual or potential bidders related to public-private competitions.
- S. For any public-private competition, the Agency shall release to the Union the certified Standard or Streamlined Competition Form and the Agency Tender on the date of the tentative performance decision.
- T. The Agency will provide the Union and all affected employees written notification of formal public announcement of the end date of a public-private competition in a timely manner. Notice will be provided on the same date as the public announcement. The notification will include all information required to be contained in the formal public announcement.
- U. The Agency will provide the Union and all affected employees written notification of formal public announcement of the cancellation of a public-private competition in a timely manner. Notice will be provided on the same date as the public announcement. The notification will include all information required to be contained in the formal public announcement by the Circular.
- V. When competitions are canceled, the Agency will provide the Union with all Agency correspondence authorizing or directing the cancellation of the public-private competition and analysis supporting the decision.
- W. The Agency shall conduct the debriefings required by the public-private competition process and the Federal Acquisition Regulation with the Union and all affected employees in a timely manner.
- X. The Agency will inform the Union of all contests filed by interested parties within 24 hours of all such filings, including Agency level protests and protests filed with the Government Accountability Office, the Court of Federal Claims, Small Business Administration, etc.
- Y. The Agency will hold the implementation of all public-private competition decisions in abeyance until final decisions have been reached upon timely filed contests.
- Z. For any public-private competition, the Agency shall release to the Union, upon request, the data upon which the in-house cost estimate is based. This data shall include, but not be limited to, workload levels, indirect costs, number of vacancies, historical costs, raw data, observations, etc. This data shall not include internal Agency recommendations or deliberations but instead the data and observations on which the deliberations and recommendations are based.
- AA. The Agency shall provide to the Union, upon request, all documents relating to a public-private competition as soon as allowable by applicable laws and regulations.

Section IX. Employee Placement

- A. When employees are adversely affected by a decision to contract out, the Agency will find available positions for employees. Employees will receive:
 - 1. priority consideration for available positions within the Agency;
 - 2. priority listing for a placement program; and
 - 3. reasonable costs for training and relocation that contribute to placement.
- B. Before the Agency contracts with the private sector to perform work without holding a public-private competition, the Agency shall notify the affected employees and the Union 60 calendar days prior to any such contract or task order being signed by the Agency or any such transfer of work. At such time, the Agency shall provide the Union with the following information:
 - 1. A list of employees who currently perform the same or similar function(s), with the following information about each: job title, current position description, grade, and work location;
 - 2. The Agency's rationale for reviewing the function at issue for contractor performance; and
 - 3. All data upon which the decision to pursue a direct conversion instead of in-house performance was chosen; and
 - 4. All Agency correspondence authorizing or directing the contracting with the private sector, or consideration thereof.
- C. The parties will bargain under the terms of this MCBA at the Union's request. At a minimum, the Union will be allowed to submit alternatives to a direct conversion, and the Agency must consider these alternatives and provide a written response to the Union regarding these alternatives within ten (10) calendar days.
- D. The Agency shall provide to the Union and potential affected employees in an electronic format all documents and information made available to bidders on the same day that they are made available to bidders. If the Agency directly converts work to contractor performance without a solicitation for bids, the Agency shall provide the Union with all documents and information pertaining to the action on the same day that the documents and information are available to any other party.

Section X. Contracting Out Decision/Reduction in Force

- A. If a decision is made to contract out work, or if a public-private competition results in an in-house win but includes a reduction in force, the Agency will comply with all provisions of RIF Article of this MCBA.
- B. The Union retains the right to bargain additional procedures and arrangements for adversely affected employees regarding specific decisions by the Agency to contract out the work of bargaining unit employees as they occur.
- C. If the Union chooses to bargain, Agency implementation will be held in abeyance pending the completion of bargaining, including the resolution of any impasse disputes.

- D. No contract award shall be made until all grievance procedures, up to and including arbitration, are exhausted concerning any provision contained herein pertaining to the impact and implementation of a contracting-out decision.
- E. The Agency will request Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Program (VSIP) authority from the Office of Personnel Management for all potentially affected employees as soon as possible in the case of contracting out. The Union reserves the right to negotiate the request for VERA and VSIP authority specifically the targeted grades and positions.
- F. No bargaining unit employee entitled to a right of first refusal with a contractor who refuses employment with a contractor shall be denied any rights they might otherwise have under this Agreement or applicable Reduction-In-Force procedures, or any other personnel procedures.

Section XI. Insourcing

- A. At the time of the annual briefing discussed above, the Agency must provide the Union with a list of functions performed by contractors that are under consideration for insourcing. The statute requires that the Agency give special consideration to insourcing functions that:
 - 1. Have been performed by federal employees at any time during the previous 10 years;
 - 2. Are closely associated with an inherently governmental function;
 - 3. Are being performed pursuant to a contract awarded on a noncompetitive basis; or
 - 4. Have been performed poorly because of excessive costs or inferior quality.

Section XII. Responsible Party

- A. The Agency must provide the Union with updated contact information for the current official responsible for sourcing matters at the Agency upon the effective date of this MCBA, and within five (5) business days of any change. If a separate official is assigned responsibility for insourcing matters, the Agency must provide the Union with updated contact information for that official as well within five (5) business days of that assignment, or any change.

Section XIII.

- A. During the contract performance period, the Union is encouraged to bring known contract deficiencies to the appropriate contract administrator or designee's attention. The deficiencies shall be reported by the Union in writing and the Agency shall respond to the new report, in writing, within 30 calendar days of the initial report with corrective action. The Agency shall include all deficiencies reported in the Contractor Performance Reporting Standards (CPRS) assessment.

Definitions

*The parties agree this Definitions Article will be a “living” document throughout these MCBA negotiations.

Section I. Definitions

Employer, Agency, or Management means the United States Environmental Protection Agency and its authorized representatives including supervisors and management officials.

Union means the American Federation of Government Employees, AFL-CIO, Council 238 or Local and its designated representatives and agents.

Government means the Government of the United States of America.

Unit means the consolidated bargaining unit for which the Union is the exclusive representative within the Agency.

Local Level means the location at which an election was conducted to determine whether the Union should become the exclusive representative (e.g. a Regional Office is a local level). For the purposes of this Agreement, the part of the Union located at the Agency's headquarters is a local level.

Representative, Agent, or Spokesperson means an individual expressly designated and authorized by one of the Parties to speak for a make commitments on behalf of that Party.

Agreement means this collective bargaining agreement.

Official time means paid time when an employee would otherwise be in a duty status. It is an excusal from an employee's regular duties under the circumstances and conditions set forth in this Agreement.

Laws and Statutes means the Federal laws and Statutes of the United States.

Regulations means the written official policy of EPA and applicable Government-Wide rule or regulation.

The Statute means the Federal Service Labor-Management Relations Statute, Public Law 95-454.

Interference: Unwanted or unnecessary inappropriate interference in Agency scientific work by an external or internal management person or group; the distortion, suppression or avoidance of scientific outcomes or results to meet preferred policy objectives; sidelining, marginalizing, excluding scientists to meet preferred policy objectives; failure

to include scientists and scientific work in Agency science based policymaking.

Scientific Integrity: is the condition resulting from the Agency's adherence to professional values and practices when conducting, reporting, and applying the results of scientific activities that ensures objectivity, clarity, and reproducibility, and that provides insulation from bias, fabrication, falsification, plagiarism, inappropriate influence, political interference, censorship, and inadequate procedural and information security, or any other undue influence causing an employee to alter a scientific recommendation or finding.

Scientific Misconduct: a manipulation or distortion of the proper scientific process that informs policy; misconduct can include allegations of mismanagement, abuse of authority, falsification or censorship that compromises the agency's scientific record; political interference by the Agency's senior leadership can be a form of scientific misconduct.

Grievance: the appeal process for scientific misconduct identified by employees defined in the Negotiated Grievance Procedure article

Bridge positions are positions which combine administrative tasks from the current position and technical tasks from the "Target" position. The "Bridge" position may be a new or an existing position and is designated as a quasi-technical position which has a related two grade interval as the "Target" position.

Target positions are positions for which an Upward Mobility Program participant will qualify upon successful completion of a prescribed period (usually one year) in a program of formal and on-the-job training. The promotion potential must be specified in the Upward Mobility position announcement and identified in the position description.

Agency Benchmark Standards are the written measures of the levels of achievement for employees' duties and responsibilities.

Effective Level of Performance: The performance of an employee is at the "Effective" level which warrants advancement of the employee's rate of basic pay to the next higher step of the grade in accordance with 5 CFR Part 531.

Appraisal Period: The established period of time for which performance will be reviewed and for which a rating of record will be prepared.

Assumptions: Known factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective. It is understood that employees cannot be held accountable on critical elements for factors outside their control.

Critical Element: A work assignment or responsibility of such importance that "unacceptable" performance on the element would result in a determination that an employee's overall performance is "unacceptable".

Levels of Performance: There are three levels of performance: "distinguished", "effective", and "unacceptable".

Within Grade Increase: A periodic increase in an employee's rate of basic pay from one step of the grade of her or his position to the next higher step of that grade.

Interim Rating: A written rating prepared as input to the rating of record by the former supervisor when a change of supervisor occurs during the appraisal period. An employee must have completed the minimum period of performance to receive an interim rating.

Measurement Source(s): Identification of sources that may establish reliable and supportable basis for a rating and may be used to determine if standards are met or not met, such as but not limited to: personal supervisory observations, employee written work products, customer, stakeholder, or feedback from team leaders.

Measures and Metrics means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. Measures may include quality and timeliness of the performance of a particular duty or responsibility. Metrics may be a quantity, or an amount of work required to be performed by an employee in a particular position.

Minimum Period of Performance: The minimum amount of time (90 days) that must be completed before a rating of record may be given.

Non-Critical Element: A dimension or aspect of individual, team, or organizational performance, exclusive of a critical element. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance. Non-critical elements are not used in assigning a summary level.

PARS: Performance Appraisal and Recognition System.

Performance: Accomplishment or failure to accomplish work assignments or responsibilities.

Performance Agreement: See Performance Plan.

Performance Plan: All of the written, or otherwise recorded, performance

elements, critical elements, non-critical elements, and performance standards that set forth expected performance. A plan must include all critical (and additional elements, if applicable) and their performance standards.

Performance Assistance Plan (PAP): A written plan that is developed collaboratively between the immediate supervisor, the employee, and the Union (upon request of the employee and agreement by the supervisor) for the purpose of providing assistance to the employee to improve performance to the Effective level. The Agency shall provide a signed copy of the written PAP to the employee. The Employee shall sign the written plan to demonstrate receipt of the plan.

Performance Improvement Plan (PIP): A written document from the immediate supervisor that is developed collaboratively between the immediate supervisor, the employee, and the Union (if requested by the employee) to help an employee improve performance that is ""unacceptable"" to the Effective level. The Agency shall provide a signed copy of the written PIP to the employee. The Employee shall sign the written plan to demonstrate receipt of the plan.

Performance Standard: The management-approved expression of the performance requirement(s) or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, cost effectiveness, and manner of performance. Each Critical Element must have an Effective performance standard.

Progress Review: A review with the employee about performance progress in critical or additional elements. A progress review shall occur at least quarterly.

Rating: The written appraisal of performance compared to the performance standard(s) for each critical element on which there has been an opportunity to perform for the minimum period.

Rating of Record: The performance rating prepared at the end of the appraisal period for performance over the entire period and the assignment of a summary level. This constitutes the official rating of record as defined in 5 CFR Part 430.

Unacceptable Performance: Performance that fails to meet established performance standards in one or more of an employee's critical job elements.

Section II. Other words and terms used in this Agreement:

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Where other words or terms are defined in an applicable law or regulation, they shall have that meaning. Where words or terms are not defined in this Agreement, by applicable law or regulation, they shall have their dictionary meaning (Webster's Unabridged).

Details

Section I. General

- A. Full transparency is imperative when details become available. The Agency shall announce all details through the Agency email system and intranet.
- B. Details shall be rotated equitably among those employees who have been determined by management to have the requisite skills. The Agency shall document all details through an SF-50 and provide the Union with an annual report that reflects all details offered to all employees, regardless of BUE status. The annual report shall include the name of the employee(s) detailed, the position to which the employee was detailed, and the length of detail.
- C. The Agency recognizes the value of detail opportunities for career development and to prevent burnout of employees and agrees under no circumstances will a supervisor prevent an employee from applying for a detail. A supervisor will not deny an employee's acceptance of a detail without documented mission critical needs and will provide a copy of the justification for the denial.
- D. If the justification used in the denial by the supervisor identifies "staffing constraints," the employee shall be considered for a retention bonus at the next possible retention bonus cycle. The supervisor will also provide the employee with a staffing plan that outlines the steps the Agency will take to correct the deficient staffing in the respective work area to ensure equal access to details for all staff in the future.

Section II. Higher Level Classified Position(s)

- A. The Agency will provide a memorandum to the employee documenting official details to higher level classified positions of more than ten (10) consecutive workdays. Official details in excess of thirty (30) calendar days will be recorded on an SF-52 "Request for Personnel Action."
- B. An employee temporarily assigned to a classified position at a higher level for more than thirty (30) calendar days will receive a temporary promotion for the full time of the temporary assignment. The Agency will process paperwork for the temporary as soon as practicable, but no later than the 31st day of the assignment. The employee must meet any qualification and eligibility requirements to be promoted.
- C. Temporary promotions in excess of 120 calendar days shall be filled through competitive procedures. Temporary promotions of less than 120 calendar days may be rotated equitably among those employees who have been determined by management to have the requisite skills for the assignment.

Section V. Other Provisions

- A. Details to a lower classified position shall not affect the employee's classification or salary.
- B. Details to less physical, stressful or other demanding positions may be used for employees undergoing or completing medical treatment.
- C. Length of details will be in accordance with OPM regulations.
- D. Management will keep details within the shortest practicable time so that they will not promote any compromise of the open competitive principles of the Merit Promotion System.

Disciplinary and Adverse Actions

Section I. General

- A. The Parties agree to the philosophy of progressive discipline. The Agency will conduct disciplinary actions privately and in such a manner as to avoid embarrassing the employee. Disciplinary and adverse actions will be initiated as timely as possible after the offense is committed, or management becomes aware of the offense.
- B. The Agency shall inform employees who are experiencing performance, conduct and/or attendance problems of the existence and operation of the Employee Counseling and Assistance Program (ECAP) and refer those seeking assistance.

Section II. Definitions.

- A. An informal action is non-punitive in nature and includes closer supervision, oral admonishment, or a letter/memorandum of warning.
- B. A formal disciplinary action is a suspension of less than fourteen (14) calendar days and letters of reprimand.
- C. An adverse action is a suspension of more than fourteen (14) calendar days, a reduction in grade or pay (as defined in 5 C.F.R. 752.402), a furlough of thirty (30) calendar days or less, and removal.
- D. Performance-based actions and RIF actions are covered by the PARS and RIF Articles of this MCBA.
- E. Where there are calendar-based deadlines for action and the last day falls on a day which the official duty station is closed (weekends, holidays, emergency closures, etc.) the deadline shall be the next business day in which the official duty station is open.

Section III. Informal Disciplinary Actions.

- A. The supervisor or appropriate management official shall advise the employee of the specific infraction or breach of conduct and give the employee the opportunity to explain their side of the matter and, if warranted, an oral admonishment will outline what steps are necessary to preclude a recurrence. The employee will be provided time to seek union representation if requested. It is understood that it is the employee's obligation to make such a request.
- B. Letter/Memorandum of Warning consists of a description of the misconduct, an outline of positive corrective steps, and states what penalty might result if the actions continue.
- C. The Agency will not cite any records regarding an informal action. The only exception

is where an action for a like offense has been issued in the previous six (6) months.

Section IV. Formal Disciplinary Actions.

- A. Before issuing a letter of reprimand, the supervisor or appropriate management official must fully discuss the incident in question, with the employee to permit the employee to present their side of the situation. If after the employee presents their views, the supervisor or appropriate management official considers a reprimand to be warranted it will be issued to the employee in writing by the immediate supervisor or appropriate management official not less than two (2) workdays after the discussion. The letter will state the employee's right to be represented by an attorney or other representative, including the Union. The employee will be given five (5) business days to provide a written response to the reprimand. The employee shall be authorized a reasonable amount of duty time to prepare a response. This response will be included in the employee's file with the reprimand if so requested. Letters of reprimand will be maintained in an employee's Official Personnel Folder for up to two (2) years.
- B. Any suspension of fourteen (14) days or less must be preceded by a written proposal notice at least fourteen (14) calendar days before the discipline is to be affected. The employee will be given ten (10) calendar days in which to provide the deciding official a response either orally, in writing, or both. Advance notices will specify the deciding official to whom the employee should provide any reply. The notice will state the employee's right to be represented by an attorney or other representative, including the Union. The employee shall be authorized duty time to prepare a response.
- C. The employee and their representative shall be provided with a copy of all disciplinary actions marked "COPY for EMPLOYEE's REPRESENTATIVE". The employee and their representative will also be provided the material management is relying upon to propose the action including but not limited to:
 - 1. If supervisory notes are kept on employees, the notes will be maintained in a secure fashion and disclosed only to those officials with a need to know. Supervisory notes, or the applicable portion thereof, used to support a disciplinary action are to be made available to the employee upon request within two (2) workdays.
 - 2. The Agency may redact any material reviewed or supplied to the employee/representative, consistent with legal or regulatory requirements. If management is relying upon witness statements, the Agency will provide the identity of the witness(es), and any witness statements.

Section V. Adverse Actions.

All adverse actions with the exception of C and D below, must be preceded by written notice at least thirty (30) calendar days before the intended effective date. The notice will state the employee's right to be represented by an attorney, or other representative, including the

Union. Employees will receive at least fifteen (15) calendar days to provide the deciding official a response, either orally, in writing or both and to furnish affidavits or other evidence in support of the response. Employees shall be granted duty time to prepare the response. The deciding official or designee will consider requests for extensions of time. No request for an extension of time will be unreasonably denied.

- A. The advance notice shall inform the employee of the right to review the material management is relying upon to propose the action.
 1. If supervisory notes are kept on employees, the notes will be maintained in a secure fashion and disclosed only to those officials with a need to know. Supervisory notes, or the applicable portion thereof, used to support a disciplinary or adverse action are to be made available to the employee upon request within two (2) workdays.
 2. The Agency may redact any material reviewed or supplied to the employee/representative, consistent with legal or regulatory requirements. If management is relying upon witness statements, the Agency will provide the identity of the witness(es), and any witness statements.
- B. The notice of proposal will specify the Agency official who will hear the employee's response and make a decision on the proposal. The Agency official will normally be the next higher-level official in the proposing official's chain of command, unless the proposing official is the Deputy Administrator, or Administrator of the Agency. If the employee chooses to make an oral reply, the reply may be made virtually or in person at the deciding official's work location. The deciding official or their designee, will summarize the oral reply, if any, and include it in the case file. The employee will review the summary of the oral reply and make changes as necessary. Upon agreement with the content of the reply summary, the employee will sign or initial the document, either electronically or in hard copy. If the employee chooses they may provide a summary to be included in the case file.
- C. In cases of proposed adverse action when the Agency has probable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed, and the Agency determines it to be in its best interest, no advance notice is required.
- D. An advance written notice and opportunities to respond are not necessary for furlough without pay due to unforeseeable circumstances, such as acts of God, or sudden emergencies requiring immediate curtailing of activities. Management agrees that such furloughs will be an act of last resort. When management has the authority to do so, excused absence may be granted.
- E. The employee and their representative shall be provided with a copy of disciplinary actions marked "COPY for EMPLOYEE'S REPRESENTATIVE."

Section VI. Decisions.

- A. The decision will be provided in writing to the employee and will specify the charges sustained and the penalty imposed. The decision will include the rights of appeal available to the employee and will notify him/her of the right to designate a representative, including the Union.
- B. The Agency will consider the Douglas Factors when making a final determination on the appropriateness of a penalty in an adverse action case. The proposing and deciding official must review each case individually and apply those Douglas Factors that are relevant.

Section VII. Removal From the Workplace Pending a Decision.

- A. Under ordinary circumstances, an employee whose removal has been proposed will remain in a duty status in the position of record during the advance notice period. In circumstances in which the Agency reasonably believes that the employee's continued presence in the workspace during the reply period poses a threat to persons or property, or otherwise jeopardize Government interests, the Agency will consider the following alternatives prior to placing the employee in a paid, non-duty status:
 - 1. Assigning the employee to duties where the perceived threat no longer exists;
 - 2. Placing the employee on leave, with their consent; or
 - 3. Carrying the employee in the appropriate status if they are absent for reasons not originating with the Agency.
 - 4. Providing for Telework.
 - 5. If none of these alternatives are selected, the Agency may place the employee in a paid, non-duty status during all or part of the advance notice period, as consistent with law or regulation.

Section VIII.

Employees may only grieve a disciplinary action through the Negotiated Grievance Procedure (NGP) Article of this MCBA. Employees may appeal adverse actions to the Merit Systems Protection Board (MSPB), or file a grievance under the NGP Article of this MCBA, but may not do both. Once an employee has elected to file an MSPB appeal or a written grievance under the NGP, the employee may not change subsequently to the other procedure.

Section IX.

In lieu of rendering a decision on a proposed action a deciding official may choose to offer an employee a settlement agreement, or access to Alternate Dispute Resolution (ADR) if locally established pursuant to this MCBA. Any settlement agreement may not conflict with the terms of this MCBA. Any settlement talks which constitute "formal discussions" under 5 U.S.C. Chapter 71, may be attended by a Union representative pursuant to this MCBA.

Section X.

This Article will be administered as required by law and in accordance with MSPB regulations. Where an employee appeals an adverse action through the NGP Article of this MCBA and the Union proceeds to arbitration, the arbitrator is bound by the same rules governing the burden of proof and standards of proof that govern adverse actions before the MSPB.

Section XI.

The Parties recognize that the age of any evidence offered by any Party may be a factor detracting from its credibility and that as such, such evidence may lose its probative value.

Discrimination and Harassment

Section I. Purpose

A fair, unbiased process for reporting, investigating and implementing corrective action measures to eradicate harassment is essential to a safe and productive workplace. The purpose of this Article is to augment the EPA 4711 Order to provide for procedures for fact-finding investigations of all allegations of harassment as defined herein; and prompt, equitable and appropriate corrective action as necessary.

Complaints of harassment made under this Article may be made in addition to other applicable processes. The EPA 4711 process does not stay the timelines that apply to the EEO or grievance procedures.

Section II. Roles and Responsibilities

A. AFGE representatives will be notified when an employee is involved in the 4711 process either as the offender, reporter or witness. The Union reserves the right to attend all Fact-finding interviews and conduct separate interviews with employees to fully represent the employee.

B. Employee Role

1. Employees have the right to advocate for themselves or anyone in their organization that may be subjected to harassment, including but not limited to identifying the harassment, expressing how such harassment impacts the affected persons mental wellness and job performance and why such harassment needs to cease.
2. Employees may request Union representation when reporting harassment and/or cooperating with any fact-finding procedures of harassment.
3. All employees are required to cooperate in fact-findings regarding allegations of harassment.

C. Agency Role

1. The Agency will not tolerate verbal, physical, emotional, psychological or abusive workplace conduct that harasses, disrupts, interferes with an employee's work performance, mental or physical well-being, or creates a toxic environment that is intimidating, manipulative, offensive and/or hostile.
2. The Agency will not tolerate or condone any form of retaliation against an employee for reporting harassment or cooperating in an investigation of alleged harassment.
3. The Agency will promote and ensure the safety, health and emotional wellbeing of all employees.
4. The Agency will promote open, clear, two-way communication without creating any fear of retaliation or manipulation tactics.

[PAGE]

5. The Agency will prohibit the encouragement and acceptance of institutional and global abusive culture or workplace bullying.
6. Supervisors will maintain consistent and continuous communication with employees to foster a workplace environment conducive to professionalism and respect.

Section III. Prohibited Supervisor Conduct

- A. Supervisors and managers will not use Lean Management tools such as huddles, visual management boards or any other Agency tools as a conduit to abuse authority, harass, mistreat, humiliate, incessantly criticize, manipulate or invoke fear or any other abusive workplace behavior towards any employee.
- B. Supervisors will not use harassment as a means to motivate employees.
- C. Supervisors will respect the employee's personal boundaries expressed by the employee.
- D. Supervisors will not use their authority as supervisor to assign, delegate and oversee workload and duties to inflict fear, intimidation, manipulation, psychological abuse or isolate an employee.
- E. In communicating and interacting with employees, supervisors will not threaten, give incessant unwarranted criticism, use psychological manipulation, verbal abuse, intimidation, gaslighting, or isolate/marginalize employees from workplace activities, undermine or sabotage employee work performance or use any other form of abusive behavior.
- F. Supervisors will monitor the work environment to ensure a safe and healthy workplace is maintained.
- G. Supervisors will be held accountable for all instances of harassment, if they knew or should have known of the harassing conduct and failed to take prompt and appropriate corrective actions to maintain a respectful and safe workplace.
- H. Supervisors will make good faith efforts to foster a healthy workplace culture by preventing harassment, providing a safe environment where employees can voice concerns and ideas without fear of retaliation, and value all employees allowing employees the freedom to perform to their strength within the organization.
- I. Any supervisor manager who receives a report of harassment or otherwise becomes aware of harassment of an employee, or an allegation of the same, shall immediately make an Initial Report.
- J. Abusive behavior includes but is not limited to:
 1. Vexatious or nefarious behavior (humiliating or abusive behavior that lowers a person's self-esteem, torments, or inflicts emotional or psychological trauma)

negatively impacts the employee's ability to execute their job responsibilities or successfully perform their duties as a result of the hostile work environment. This includes behavior that exceeds what a reasonable person would consider to be appropriate and acceptable in the performance of their work.

2. Unwelcome and inappropriate verbal comments, yelling, offensive jokes or stories;
3. Visual offensive pictures, photos, cartoons, posters, calendars, magazines, or objects;
4. Unwelcome and inappropriate physical, touching, hugging, kissing, stroking, ogling, or suggestive gestures;
5. Psychological torment such as excluding employees from team or group meetings, functions, communications (necessary for the employee to perform their job responsibilities), activities, or failing to acknowledge or recognize the contributions and accomplishments of the employee;
6. Micro-managing the oversight and execution of an employee's interactions with organization management, peers, and team members
7. Aggressive micro-management of an employee's workload through incessant communications concerning the nature of the work, deadlines, etc.
8. Narcissistic conduct such as gas-lighting, manipulation or any other psychological behavior that creates a toxic and hostile work environment such that an employee is unable to perform their work duties.
9. Emotional Abuse (emotional or verbal abuse means the intentional infliction of anguish, distress, or intimidation through verbal or non-verbal acts or denial of civil rights).
10. Inappropriate and unwelcome written communication such as letters, notes, chat messages or e-mails of a personal nature that could possibly provoke fear or intimidation;
11. Inconsistent and unfair application of Agency policies and guidance.
12. Belittling comments or remarks made about an employee's performance during meetings
13. Purposely excluding an employee or group of employees from projects/meetings or opportunities or targeting employees for personal attributes.
14. Deliberately altering work hours, workload, work schedules, denying approval of leave or other flexibilities without proper justification for purposes of causing inconvenience or intimidation.

Section IV. Definitions

A. Harassment. In addition to the description of Harassment contained in the Agency 4711 Order, harassment is a separate broader category of workplace misconduct. The Parties agree abusive workplace behavior is detrimental to the Agency's overall mission and results in a hostile working environment. Examples of abusive workplace behavior include, but are not limited to:

1. Oral or written communication that contains offensive name calling, jokes, slurs, negative stereotyping, hostility, or threats. This includes comments or jokes that are distasteful or targeted at individuals.

2. Nonverbal conduct, such as staring or leering that can objectively be construed as harassment.
3. Physical misconduct, such as assault or unwanted touching.
4. Microaggression such as verbal, nonverbal slights, insults or snubs intentional or unintentional that convey derogatory, hostile or negative messages
5. Distribution or display of visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.
6. Backbiting, talking negatively about an employee(s), persistent badgering, scrutinizing, criticizing, humiliating, embarrassing, gossiping, character assassination, and ostracizing of an employee.
7. Persistent glorification of favored employees in an attempt to discourage others from applying for positions with promotional potential.
8. Coercive control involving nonviolent tactics, such as intimidation, and incessant monitoring, micromanaging of an employee's workload, assigning an excessive amount of work as a form of retaliation, monitoring of time and attendance used to exert and maintain fear and dominance.
9. Inappropriate isolation of an employee, such as excluding an employee from office meetings that are open to other staff or related or linked to the employee's work responsibilities or critical elements or required per PARS, orders to not speak to others about their work or associate with others, withholding from an employee information needed to do their jobs or function fully within the organization, or any other isolating behavior.
10. Work sabotage or any other passive aggressive psychological manipulation.
11. Excessive performance monitoring or harsh and unjust criticism even in the course of delegating, reviewing, explaining or overseeing employees duties and responsibilities. This includes criticism that seeks to humiliate, intimidate or manipulate.
12. Workplace bullying/mobbing may include the deliberate, hurtful, negative behavior, the creation of a toxic workplace environment, hostile behavior, repeated and incessant mistreatment, manipulation, gas-lighting of one or more employees. Examples of workplace bullying/mobbing include constant and unfair criticism, teasing, yelling, insulting, malicious gossiping, and aggressive behavior.

B. Conflict Mediation Meeting. A conflict mediation meeting is a pre-complaint process where an employee can request as a means to resolve the matter prior to making a complaint. The Conflict mediation meeting involves the employee and the alleged harasser.

C. Complainant: An employee or witness who has made an Initial Report of Harassment.

D. Corrective action, if warranted, should be designed to stop the harassment, restore the complainant to the position they would have been in, to the extent possible, had the harassment not occurred, and ensure that the harassment does not recur. Corrective action, under this Article, may include, but is not limited to:

[PAGE]

1. a number of interventions as well as appropriate disciplinary actions such as reprimand, proposed suspension, or proposed removal.
 2. Restoration of leave taken because of the harassment if it is determined that leave was taken as a direct result of harassment;
 3. Offer of reinstatement to a former employee when it is determined that they left the Agency involuntarily primarily due to harassment;
 4. Expunging negative evaluation (s) in complainant's personnel file that arose from the harassment if it is determined that the negative evaluation directly resulted from harassment;
 5. Training, coaching or counseling such as anger management, communication, sensitivity, or any other form of training to foster a professional, healthy workplace environment for the complainant and alleged harasser.
 6. Reassignment of the alleged harasser to a parallel or lesser position
 7. Appointment of the complainant to new supervisor
 8. Disciplinary action.
 9. In the event that the alleged harasser is not an Agency employee, coordinate corrective action with the appropriate employer; such action may include termination of the alleged harasser's access to Agency facilities and equipment. Corrective and/or disciplinary action will be the responsibility of the contracting company. The contract officer will be informed of all corrective measures taken under this Article.
- E. Initial Report of Harassment. "Initial Report of Harassment" as used herein means a report, oral or written, made by an employee or a witness to a supervisor, Union representative or LER official of alleged harassment.
- F. Decision Panel. The "Decision Panel" or "Panel" as used herein, means a panel of no less than three people consisting of an LER representative, an AFGE representative, and another non-supervisory employee. No person directly associated with the complainant, or the alleged harasser may be panel members, e.g. supervisors, witnesses.
- G. Factfinder. "Fact-finder" as used herein refers to the third party neutral external to the Official Agency Work Site where the alleged harassment took place. The Factfinder conducts the investigation of the alleged harassment.
- H. Fact-finding Report. "Fact-finding Report" as used herein is a written report prepared by the fact-finder based on the Fact-finder's investigation into the alleged harassment. The information contained in the fact-finding report will include a summary of all investigative steps taken and evidence gathered. The report does not render judgment of the allegations or evidence of harassment and does not contain recommendations to the decision-maker; it merely sets forth the relevant facts, as revealed through the inquiry.
- I. Fact-finding is the use of an impartial expert external to the Agency selected by the Agency in order to determine the facts of an alleged incident of harassment. The identified external fact finder will be qualified to conduct the investigation based on the specifics of the allegations. The fact finder will be only authorized to investigate

or evaluate the matter presented and file a report establishing the facts in the matter. Generally, the fact-finder will complete the fact-finding investigation of alleged harassment and will deliver a fact-finding report to the Agency for distribution to the Decision Panel within 45 business days of their designation. The time period for completing the fact-finding and report may be extended by the Agency under certain circumstances (e.g., unavailability of witnesses). Fact-finding will usually include, at a minimum, interviews with:

1. The complainant;
2. The alleged harasser(s);
3. Any witnesses to the alleged harassment, and
4. Any other person who could reasonably be expected to have relevant information that could corroborate or refute allegations.

Section V. Procedure

- A. An employee who believes that they have been subject to harassment may request a Conflict Mediation meeting with the alleged harasser through the local LER. The employee requesting the Conflict Mediation meeting may have a representative present. The representative may be a Union representative. The purpose of the Conflict Mediation Meeting is to resolve the potential allegations. If the Conflict Mediation results in a resolution of the potential harassment allegation, the resolution will be memorialized in an email to all parties, and their supervisors. If the alleged harasser is a grantee or contractor, the email will also be sent to the Agency grant or contract management officer supervising the related grant or contract.
- B. The Conflict Mediation is not mandatory nor is it a prerequisite to filing an Initial Report. During the period of Conflict Mediation the time period for filing a grievance is stayed.
- C. Initial Report of Harassment. Employees may file an Initial Report of Harassment to their supervisor or Agency HR officials. Initial Reports can be filed by a victim of harassment or a witness to harassment.
- D. The Initial Report will be made, either orally or in writing, generally within thirty (30) days of the alleged incident of harassment, to a first-line supervisor. If the first-line supervisor is the alleged harasser, then the employee will make the report to the next manager in their chain of command, or an Agency HR official.
- E. The Agency will have fifteen (15) days from the date the Initial Report was made to appoint a third party neutral Fact-finder.
- F. The Fact-finder will complete summaries of any interviews conducted and obtain signatures from interviewed persons attesting to the accuracy of their written statement, or obtain affidavits, declarations, or transcribed interviews, under oath, as appropriate. If an interviewed person refuses to attest to the accuracy of the information he or she provides to the fact-finder that is reflected in an interview

[PAGE]

summary or other document prepared by the fact-finder, the fact finder may still include such document in the Fact-finding report for consideration by the Decision Panel. In such situations, the Factfinder must ask the interviewed person to explain their refusal for attesting to the accuracy of the document and include such explanation in the fact-finding report.

- G. The Factfinder will have forty-five (45) days to conduct an investigation and write a Fact-finding report. The Fact-finding report will be turned over to the Agency for distribution to the complainant, the alleged harasser, and each member of the Decision Panel and any representative of the complainant and the alleged harasser.
- H. The Agency will convene the Decision Panel no later than five (5) days after receipt of the Fact-finding report. The Panel will meet and review the Fact-finder's report and make a determination. The Panel's determination will be based on the facts documented in the Fact-finding report. If the Panel determines harassment has occurred, the Panel will recommend corrective measures to the HR Director. The determination of the Panel will be made in writing, and distributed to the complainant, the alleged harasser, and each member of the Panel and any representative of the complainant and the alleged harasser and the HR Director.
- I. Once the Panel determines the corrective action, they will consult with the complainant and share the proposed action items and completion dates.
- J. The Agency will implement the corrective measures recommended by the Panel unless there are circumstances which prevent the measures from being implemented. In such circumstances, the Agency will provide a written explanation of why the measures cannot be implemented. The written explanation will be distributed to the complainant, the alleged harasser, and each member of the Panel and any representative of the complainant and the alleged harasser.
- K. The Panel will have ten (10) days to meet with the Agency and identify alternative corrective measures. These measures shall be described in writing and distributed to the complainant, the alleged harasser, and each member of Panel and any representative of the complainant and the alleged harasser.
- L. If the Panel determines that abusive workplace behavior has not occurred, they will recommend conflict resolution strategies to improve the professional working relationship between the employee and the alleged harasser.
- M. If the panel concludes that harassment has not occurred, the panel will inform the complainant and alleged harasser that the harassment allegations were not supported by the information collected during the fact-finding. Regardless of the conclusion, the panel will inform the complainant and the alleged harasser of the prohibition against retaliation against anyone who reported allegations of harassment and/or participated in the fact-finding.
- N. All matters related to reports of harassment are confidential and limited to Agency Officials and other persons who need to know.

Section VI. Alleged Harassment by a Grantee or Contractor or other Non-Agency employee against an Employee

- A. If the allegation of harassment involves an alleged harasser who is not an Agency employee, the complainant or witness shall make a report of the harassment to the Agency LER official. The Agency contract or grant officer will also be notified by the Agency LER official.
- B. The LER official shall promptly and appropriately assess the situation to determine the nature of the allegation considering all information provided by the complainant as well as all take appropriate investigative actions to identify what action(s), if any, should be immediately taken.
- C. In the event that the alleged harasser is not an Agency employee, corrective action may include termination of the alleged harasser's access to Agency facilities and equipment.
- D. If the harasser's employer does not implement or participate in any recommended corrective action, the HR representative will notify the relevant Deputy Regional Administrator and Office of Mission Support Director for further action of the employer's non-cooperation and request suspension of the grant or contract.

Section VII. Agency Actions While an Investigation is Pending

- A. The Agency will immediately take the following actions when an employee has submitted an Initial Report of harassment:
 - 1. Inform the alleged harasser that an allegation has been made, describe the nature of the allegation, and explain that the conduct, if true, must immediately cease.
 - 2. Inform the alleged harasser of the prohibition against retaliation against any person for raising allegations of harassment or participating in a fact-finding regarding such allegations, which includes informing the alleged harasser of examples of perceived acts of retaliation.
 - 3. Instruct the complainant and alleged harasser to refrain from initiating work-related contact with each other (in person, via email, or by telephone, or any other Agency-sanctioned communication platform) pending the outcome of the fact-finding.
 - 4. Advise all persons involved of the requirement to maintain confidentiality of the matter.
 - 5. Inform the complainant and the alleged harasser that the Agency is obligated to conduct appropriate Fact-finding through an impartial, external third party including preparation of a fact-finding report (if appropriate).
 - 6. Temporarily transfer the alleged harasser if necessary.
 - 7. The complainant should not be involuntarily transferred to another position pending fact-finding and review of the harassment allegations, or otherwise treated adversely in response to their allegations of harassment.

[PAGE]

Section VIII. Criminal Conduct

- A. Where the alleged harassment involves conduct that may be criminal in nature (e.g., assault or battery), the matter should be immediately referred to an appropriate law enforcement entity including FPS and the OIG.
- B. Any employee should report threats of violence, an actual assault, or any acts of violence immediately.

Section IX. Protection Against Retaliation

Retaliation for engaging in the 4711 process or the provisions of the Article in any capacity is prohibited and grievable under this MCBA.

Diversity, Equity, Inclusion and Accessibility

Section I. Introduction.

- A. The principles set forth in this Article are incorporated by reference into every Article of this MCBA.
- B. Diversity, Equity, Inclusion, and Accessibility (DEIA) is necessary to create a workplace where everyone is valued and committed to achieving organizational goals. A growing body of evidence demonstrates that diverse, equitable, inclusive, and accessible workplaces yield higher-performing organizations. The Parties acknowledge that the employee experience begins and ends with the Agency's organizational goals. The Agency/employee working relationship is central to improved engagement and to better performance. Effective employers empower their employees.
- C. The Parties agree in order to be a model employer for diversity, equity, inclusion, and accessibility all employees must be treated with dignity and respect. The Agency will strengthen its ability to recruit, hire, develop, promote, and retain talent and remove barriers to equal opportunity. The Agency will provide resources and opportunities to strengthen and advance diversity, equity, inclusion, and accessibility across the Agency.
- D. The Agency will increase hiring of diverse candidates by increasing the percentage of diverse candidates in its applicant pools. The Agency will facilitate recruitment and employment opportunities of individuals who are members of underrepresented and diverse communities. The Agency will build and strengthen partnerships with but not limited to the following:
 - 1. Historically Black Colleges and Universities, including Historically Black Graduate Institutions; Predominantly Black Institutions;
 - 2. Hispanic-Serving Institutions;
 - 3. Tribal Colleges and Universities; Native American-serving, nontribal institutions; Tribally controlled colleges and universities;
 - 4. Asian American and Pacific Islander-serving institutions;
 - 5. Alaska Native-serving and Native Hawaiian-serving institutions;
 - 6. Women's colleges and universities;
 - 7. State vocational rehabilitation agencies that serve individuals with disabilities; disability services offices at institutions of higher education;
 - 8. Organizations dedicated to serving veterans;
 - 9. Public and non-profit private universities serving a high percentage of economically disadvantaged students or first-generation college or graduate students;
 - 10. Religious institutions;
 - 11. Community colleges and technical schools; and
 - 12. Community-based organizations that are dedicated to serving and working with underserved communities, including return-to-work programs, programs that provide training and support for older adults seeking employment, programs serving formerly incarcerated individuals, centers for independent living,

disability rights organizations, and organizations dedicated to serving LGBTQ+ individuals.

- E. The Agency will affirmatively advance equity, civil rights, racial justice, and equal opportunity for all employees.
- F. The Agency will provide an equitable, accessible, and inclusive environment for employees with disabilities. The Agency will implement the Federal Government's initiatives to provide people with disabilities equal employment opportunities and take affirmative actions within the Agency to ensure full compliance with applicable laws.
- G. The Agency will combat discrimination of any type.
- H. All employees will be able to openly express their sexual orientation, gender identity, gender expression, and have these identities affirmed and respected, without fear of discrimination, retribution, or disadvantage including but not limited to gender neutral bathrooms.
- I. The Agency will provide a multi-use space for the exercise of religious activities and prayer, meditation including yoga, mindful moments, etc. This multi-use space should be large enough to accommodate six (6) to ten (10) individuals, equipped with a door and privacy shades.

Section II. DEIA Reporting and Accountability.

- A. Reporting. The Agency will report on its efforts to incorporate DEIA principles into Recruitment, Hiring, Promotion, Retention, Professional Development, Performance, Pay, Reasonable Accommodations, and Training. The Agency agrees to provide AFGE Council 238 and the local Presidents the following:
 - 1. Annually provide a copy of the MD-715 report, and any other type of DEIA Data Repository the Agency develops or uses to aggregate diversity data;
 - 2. Briefing to AFGE Council 238 and local presidents on the documents provided in response to in Section II A 1 above;
 - 3. Copy of discrimination complaints and settlements and harassment claims and settlements including but not limited to 4711 claims. These documents should include the demographic information of the settling employee and the amount of the settlement;
 - 4. Demographic information should be provided to the extent consistent with applicable privacy laws. Monthly provide a report of the demographic makeup of the following:
 - a. applicant pools for each advertised position(s);
 - b. candidates who were interviewed for the position(s);
 - c. the employee(s) who accepted the position(s);
 - d. departing employee(s);

- e. the Agency location(s) where each hired or departing employee will work or worked.

B. Accountability

1. Within ninety (90) days of approval of this MCBA, the Agency will develop a task force at a national level that is focused on a data-driven approach to the DEIA principles outlined in this Article. The taskforce will include at least two (2) AFGE representatives. The taskforce will:
 - a. evaluate the Agency's incorporation of DEIA principles into the bargaining unit experience, including how it is approaching recruitment, hiring, promotion, retention, professional development, performance, pay, Reasonable Accommodations, and training;
 - b. evaluate the Agency's efforts to recruit, hire, and retain diverse candidates; and
 - c. develop a yearly report which will be submitted to the Agency Administrator and AFGE Council President regarding efforts to integrate DEIA principles, as outlined in this Article, for Recruitment, Hiring, Promotion, Retention, Professional Development, Performance, Pay, Reasonable Accommodations, and Training. The yearly report shall, at minimum, address how the Agency is:
 - i. conducting outreach to special emphasis communities and working with identified communities, stakeholders, subject matter experts, and leaders and use various data sources to determine viable outreach strategies and metrics to determine success;
 - ii. supporting planning of National Special Emphasis monthly programming from a DEIA perspective;
 - iii. incorporating efforts to recruit, hire and retain diverse candidates.
 - iv. educating, equipping, and empowering employees and management to foster DEIA and an inclusive and equitable workplace, including outreach to employees;
 - v. providing employees with specific training on DEIA; and
 - vi. provide recommendations for improvement to recruitment and hiring processes to ensure diverse candidates are recruited, hired, and retained.
2. Within 60 days after the yearly report has been submitted to the AFGE Council 238 President, the Parties will meet to discuss the report.
3. Annually the Agency will contract with an independent auditor to evaluate the Agency's efforts to incorporate DEIA principles. The Parties agree to ensure that the auditor is truly independent, the auditor must not have been an employee of the Agency. Further, the auditor may not be employed by the Agency for three years after the date of the evaluation. The independent auditor's findings will be

an annual report and included as an attachment to the yearly report in Section II paragraph B 1 c.

4. Monthly, each Region and Headquarters office will meet with local AFGE representative(s) to discuss the Agency's efforts to incorporate DEIA principles into recruitment, hiring, promotion, retention, professional development, performance, pay, Reasonable Accommodations, and training.
5. Whenever the Agency issues a new MD-715 it will meet with AFGE Council 238 and representatives from each AFGE local to discuss the data in the report.

Section III. Training.

A. In addition to the current No FEAR training, no later than ninety (90) days after the effective date of this MCBA, the Agency will implement an interactive, stand-alone, extensive, and detailed national mandatory DEIA training for all employees (including managers and political appointees). This training will reinforce the importance of incorporating DEIA principles into every aspect of the Agency's work. The Parties agree that conditions of this training are fluid as more is learned about historical oppression and how to educate about experiences of marginalized people as such, this training will be updated regularly but no less than annually.

B. The Agency will commit to the following:

1. promoting respectful and inclusive workplaces;
2. eliminating workplace harassment;
3. understanding cultural differences
4. conflict resolution;
5. expanded intergenerational communication; and
6. increase its understanding of implicit and unconscious bias.

Section IV. Pay Equity.

A. The Agency will review Government-wide regulations and guidance consistent with applicable law, and will address any pay inequities and advance equal pay with consideration of the following:

1. job classification and compensation practices; and
2. reliance on applicant's salary history during the hiring process.

Dues Deductions

Section I. Eligibility

To be eligible to make a voluntary Union dues allotment, such allotment must be permissible under AFGE Local practices, and an employee must:

- A. Be an employee in the unit covered by this Agreement;
- B. Be a member in good standing with the Union;
- C. Have a net salary, after other legal and required deductions, sufficient to cover the amount of authorized allotments; and
- D. Submit an SF-1187, Request and Payroll Deduction for Labor Organization Dues, to a designated Union representative.

Section II. Withholding

- A. Except as provided by AFGE Local practices, under Title 5 United States Code (U.S.C.) § 7115, employees may have their Union dues withheld through payroll deductions as governed by this Article.
- B. Employees may also elect as many as six (6) additional discretionary allotments, (which are not savings allotments) that employees may use to have additional voluntary deductions withheld from their pay for other benefits which may be offered by the Union.

Section III. Dues Withholding

The Agency's payroll/HR system provider allows for electronic distribution of an employee's allotment to AFGE National (Washington D.C.) the amounts may vary from local to local as well as within a local.

Section IV. Union Responsibilities

- A. Regular Dues: Submit SF-1187 allotment for only those dues which are the regular and periodic dues required by the Union for that employee; initiation fees, special assessments, back dues, fines, and similar items are not considered dues and shall not be deducted;
- B. Forms: Provide forms SF-1187, Request and Payroll Deduction for Labor Organization Dues, to employees;
- C. SF-1187: State on the SF-1187 the allotment amount to be withheld each bi-weekly pay period; promptly sign, enter into AFGE system, redact social security number before forwarding the completed forms to the local Human Resources Office for submission to the payroll office;
- D. Authorized Union Officials: Furnish a written statement to the Agency's payroll office,

listing the names and titles of local Union officials authorized to sign the form SF-1187;
and

E. Notice to Agency of Changes: Provide the Agency's payroll office, via the Human Resources Office, with written notification concerning:

1. Changes in the amount of Union allotments at least 30 days before the pay period in which the change is requested. The amount of dues withheld cannot be changed more than once per year. Determining the amount of dues withheld is the sole discretion of the Union, and the Agency will not change dues allotments in any way without the Union's written consent.
2. Changes in the Union officials who are authorized to certify and submit SF-1187.
3. Any change in the bank routing number and/or account number used by the Union for the receipt of dues allotments.
4. The name of any employee who has been expelled or ceased to be a member in good standing with the Union within 15 calendar days of the date of final determination.

Section V. Agency Responsibilities

- A. Withhold dues on a bi-weekly basis, at no charge to the Union.
- B. Expeditiously, but no longer than two pay periods, process all requests for dues deductions (SF-1187s) received from the Union;
- C. Provide local Presidents with a biweekly electronic file of SF-1187s that have been processed by the Payroll Centers. This file will include the pay period in which SF-1187s were processed and the expected effective date;
- D. Within ten (10) days of the close of each pay period, transmit employee dues withholdings to the bank account designated by the Union;
- E. Promptly forward to the designated Union officials copies of SF-1188s received directly from Union members before processing; and
- F. Not to discourage Union membership; the Agency will not interfere with employees' right to pay, withhold or revoke Union dues.

Section VI. Processing Steps to Effect Allotment Withholding

Except where prohibited by AFGE Local practices, bargaining unit members, who decide to join the Union, may have their dues, fees, and assessments, known collectively as allotments, withheld by payroll deduction by properly completing a form SF-1187 and submitting it to officials designated by the Union. These Union officials will certify the form and include the amount of allotment to be withheld. The Union will forward the certified form SF-1187 to the Agency Human Resources Office for transmittal to the payroll office for processing. Allotments will be withheld by the Agency beginning the first bi-weekly pay period after receipt by the payroll office.

Section VII. Revocation of Allotments

- A. As required by 5 U.S.C. § 7115(a), employees may not revoke their dues withholding for at least one (1) year after the first deduction.
- B. Employees may submit to the Human Resources Office a SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues" to cancel dues.
- C. SF-1188 revocation of dues withholding notices must be submitted and processed as follows:
 - 1. SF-1188 revocation notices for employees who have had dues allotments in effect for more than one (1) year must be signed by the employee. These revocations will not become effective until processed by the Agency.
 - a. An employee who has previously submitted an SF-1188 may inform the Agency in writing that the SF-1188 should not be processed and the Agency will comply with that request so long as the Agency receives the written notice before the effective date of revocation.
 - b. Termination due to loss of Union membership in good standing will be effective on the beginning of the first pay period after the date of notification by the Union to the Agency.
 - c. For termination due to separation or movement out of the bargaining unit, a final deduction will be made for the pay period in which the action is effective.
 - 2. SF-1188 revocation notices for employees who have not had dues allotments in effect for one (1) year will become effective the first pay period commencing at least (1) year after the first deduction.
 - 3. Before any SF-1188 may be processed, it must be signed or initialed (hard copy or electronically) by a Union local President or their designee.
 - a. If an employee submits a form directly to the Union, the Union will sign or initial (hard copy or electronically) and submit the SF-1188 within five (5) working days to the Agency's payroll office, via the Human Resources Office.
 - b. If an employee submits a signed SF-1188 directly to the Agency that does not have a local President's signature or initials, the Agency will inform the employee of the requirement for obtaining the President's signature or initials. Additionally, the Agency will send the Union a copy of the SF-1188 (and notify the local President). These actions will be taken within three (3) workdays of the Office's receipt of the signed SF-1188.
 - c. If the Union does not return a signed or initialed SF-1188 within thirty (30) days after the date the Agency sent it pursuant to 3(ii), the SF-1188 is deemed initialed by the Union and eligible for processing unless the employee notifies the Agency that he or she intends to withdraw the SF-1188 per Section 7(C)(1)(i).
- D. When a bargaining unit employee is permanently placed in a non-bargaining unit position, payroll dues deduction will end, however the employee may elect to continue Union membership through payroll allotment to AFGE.

Section VIII. Reinstatement of Allotment Withholding

- A. When the employee is temporarily detailed, reassigned, or promoted to a position outside the bargaining unit, and requests dues suspension, the Union allotment withholding will restart automatically when the employee returns to their position in the bargaining unit.
- B. When an employee previously on dues allotment returns to pay status from non-pay status, the Agency will automatically reinstate the allotment withholding at the rate in effect at the time the employee returns to pay status. The Agency is not normally responsible for additional dues withholding when/if an employee returns from a non-pay status. The only exception is in the case of a furlough where employees later receive backpay. In that case, the Agency will calculate and retroactively collect any Union dues which would have been paid during the furlough period.
- C. If an employee moves from a permanent bargaining unit position to another permanent bargaining unit position, dues withholding will not be changed or canceled.

Section IX. Correction of Errors

- A. Under-Withholding - Any substantiated under-withholding errors made by the Agency shall be corrected as soon as practical after the error is discovered by the Agency or after the Agency has received a written notification from the Union's designated representative of the error.
- B. Correcting Under-Withholding - If an under-withholding occurs, the Agency will provide the employee with a written explanation that indicates the additional amount to be withheld each pay period and paid to the Union and the number of pay periods over which the additional amount will be withheld to correct the error.
- C. Overpayments to the Union - Upon determination by the Agency that dues withholding for an employee was not timely terminated and resulted in an overpayment to the Union, the Agency will affect an adjustment to reimburse the employee. The amount repaid to the employee will be charged to a Union overpayments account.
 - 1. The Union will pay no fee for these services.
 - 2. Each pay period, the Agency will forward an electronic copy of any bill for dues overpayments, with an accompanying document prescribed by the Debt Collection Act of 1982, to the Union with a copy to the Local Treasurer. This bill will identify amounts which were reimbursed to employees as a result of dues withholding, and the pay periods in which the overpayments were made to the Union. The bill sent to the Union will request repayment of the overpayments which were made to the Union. The document accompanying the bill will include a statement that debts due to the Government for more than thirty (30) days are subject to interest, to the extent required by law, as well as Treasury Department policy regarding the assessment of other fees if delinquent. The bill sent to the Union will request payments be made payable to "U.S. EPA" and will specify that the payment, and a copy of the bill, be mailed to an address designated on the bill. The right of the Union to request a waiver of overpayment in accordance with 31 C.F.R. § 5 or to

- dispute the amount of the overpayment will also be contained in the accompanying document. A copy of the bill and accompanying document will be forwarded to the Agency's payroll office, via the Human Resources Office, for use in determining the start of the period for requesting waivers by the Union.
3. Upon receipt of the amount due from the Union the accounts receivable for the applicable pay period will be closed. If a waiver or partial waiver of overpayment is timely requested by the Union, the Agency will suspend collection of the amount in question pending adjudication by the Agency's payroll office in accordance with 31 C.F.R. § 5. The personnel office that processed the request for waiver will notify the Union of the determination.
 4. To be considered timely, a request for waiver of overpayment must be submitted to the Agency by the Union within thirty (30) days from the date the electronic bill was received by the Union.
 5. Denials of Union requests for waiver of overpayment will be subject to the national grievance procedure in the negotiated National Grievance Procedures Article of this Agreement.
- D. Employees who are assigned to positions outside of the bargaining unit, and who, due to an error, do not have their dues canceled, will be sent a notice by the Agency informing them of the error and asking them to indicate whether they would like their dues refunded. Any requested refunds will be made to the employee in a timely manner. Section C, above, will apply to any refunds which result in an overpayment to the Union.
- E. When the Agency fails to timely commence dues withholding, defined in Section 5(B) of this Article to be within two pay periods, or otherwise fails to remit dues owed, the Agency will pay the full amount to the Union and recoup the funds from the employee's salary through an adjustment, subject to the employee's right to seek waiver of overpayment. When the total amount owed by the employee is fifty dollars (\$50) or less, the entire amount will be withheld in one (1) pay period, to the extent it does not exceed fifteen percent (15%) of disposable pay. When the total amount owed by an employee is more than fifty dollars (\$50), the deductions will be made in accordance with the Debt Collection Act.
- F. When an adjustment is made to an employee's salary to recoup dues withholding, the employee will be issued written notification by the Agency's payroll office of the Agency's intent to offset in accordance with the Debt Collection Act of 1982. This notification will contain information relating to the amount and nature of the debt, additional information required by the Debt Collection Act of 1982 as implemented in 31 C.F.R. § 5, subpart B and will notify the employee that:
1. They have the right to request a waiver of overpayment pursuant to 31 C.F.R. § 5; and
 2. Denials of employee requests for waiver of overpayment will be subject to the grievance procedure as outlined in the negotiated National Grievance Procedures Article of this Agreement.
- G. Disputes arising out of dues withholding situations where either the Agency has failed to withhold the appropriate amount of dues from an employee, that is, the employee or Agency owes the Union money; or where the Agency has paid the Union money collected

via dues withholding inappropriately, shall be resolved in the following manner:

1. A written statement with information regarding the potential dispute will be provided to the Union.
2. On receipt of the statement the Union will review the information provided, identifying potential problems. The local Union officials must review the information provided to them and contact the Agency within thirty (30) days of the date on which the Union received the statement from the Agency. Time used to review the information provided by local Union officials will be charged against official time as provided by the Union Rights Article.
3. Once contact has been made by the local Union with the Agency regarding a specific problem(s), the Agency's payroll office shall within ten (10) workdays, unless extended by mutual agreement, review the case(s) presented and decide if a problem does in fact exist, and how it may be corrected, for example pay adjustment. Pay adjustments will be accomplished within a reasonable amount of time, within two (2) pay periods. The Agency's payroll office will provide the local Union with information relating to the subject problem. If the determination results in a pay adjustment, the affected employee(s) will be notified by the Agency's payroll office in writing of its decision within three (3) workdays. In such cases the employee will have fifteen (15) workdays to request a waiver of overpayment.
4. Pay adjustments will be accomplished within a reasonable amount of time, within two (2) pay periods.

H. The Agency will deduct Union dues from an employee's back pay award in the event dues were not previously collected, when the employee has an allotment for dues withholding in effect at the time of the action giving rise to the back pay. Employees who have been terminated from employment and who are subsequently reinstated with back pay, will have their dues withheld from their back pay award only if requested by the employee.

Section X. Continuation of Existing Agreements.

Employees who have a current dues withholding agreement in effect on the effective date of this Agreement need not execute a new SF-1187 to come under the provisions of this Agreement.

Duration

Section I. General

- A. This MCBA shall remain in full force and effect for ten (10) years from the final ratification and Agency Head Review of the last Article or group of Articles. This Agreement may be extended in one (1) year increments thereafter by mutual agreement of the Parties.
- B. If either Party desires to renegotiate this Agreement upon termination, it will notify the other Party in writing no less than 60 days but not more than 90 days prior to the expiration date of the Agreement (or anniversary date if the Agreement has been extended). The written notice may be accompanied by proposed ground rules.

Section II. Mid-Term Reopener

- A. Either party may serve the other party with written notice, not more than thirty sixth (36) calendar days nor less than thirty (30) calendar days prior to the start of the 36th full month that this Agreement(3 year) has been in effect, of its desire to modify or renegotiate no more than three (3) existing or new Articles, for a potential total of six (6) Articles if both parties choose to open three (3) by mutual agreement. If this provision is exercised, negotiations will be commenced within thirty (30) calendar days after such notice or as may be otherwise mutually agreed upon by the parties.
- B. Either party may serve the other party with written notice, not more than sixty (60) calendar days nor less than thirty (30) calendar days prior to the start of the 60th full month that this Agreement (5 year) has been in effect, of its desire to modify or renegotiate no more than three (3) existing or new Articles, for a potential total of six (6) Articles if both parties choose to open three (3) by mutual agreement. If this provision is exercised, negotiations will be commenced within thirty (30) calendar days after such notice or as may be otherwise mutually agreed upon by the parties.
- C. Either party may serve the other party with written notice, not more than seventy two (72) calendar days nor less than thirty (30) calendar days prior to the start of the 72nd full month that this Agreement (8 year) has been in effect, of its desire to modify or renegotiate no more than three (3) existing or new Articles, for a potential total of six (6) Articles if both parties choose to open three (3) by mutual agreement. If this provision is exercised, negotiations will be commenced within thirty (30) calendar days after such notice or as may be otherwise mutually agreed upon by the parties.

Section III. Supplemental Agreements

- A. It is understood that any supplemental agreement, understanding or condition of employment must comply with the terms and conditions of this Agreement and may not conflict with this Agreement except by the express, written, consent of the Parties to this

Agreement.

- B. Supplemental agreements, understandings or conditions of employment will have the same duration of this MCBA and will expire on the expiration date of the MCBA unless this Agreement is extended under the provisions of this Article or less if under the terms of the particular supplemental agreement.
- C. All supplemental agreements, including local supplemental agreements, presently in existence at the effective date of this MCBA and any future supplemental agreements entered into during the life of this MCBA will have the same duration as and will expire on the expiration date of the MCBA unless extended under the provisions of this Article.
- D. All supplemental agreements in existence at the imposition of the 2019 Unilateral Management Directive are restored pursuant to the provisions of Executive Order 14003 and will have the same duration as and will expire on the expiration date of the MCBA unless extended under the provisions of this Article.

Section IV. Distribution and Publication of this MCBA

- A. At the completion of final Agency Head Review, the Agency will provide an electronic copy of this MCBA to all bargaining unit employees and publish the MCBA on the Agency intranet site and every regional website. The Agency will ensure that the MCBA is placed on Agency intranet sites so that it is easily accessible to employees.
- B. All superseded MCBA's will be removed or moved to a clearly marked archive file.
- C. Employees entering on duty after the initial distribution will be informed of the Union's exclusive recognition and provided an electronic copy of this MCBA.

Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 6/3/2022 9:28:26 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Howell, Joyce [Howell.Joyce@epa.gov]; Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: AFGE MCBA Proposals (2 of 3)
Attachments: AFGE Employee Counseling & Assistance Article 06032022.docx; AFGE Employee Rights 06032022.docx; AFGE Equal Employment Opportunity 06032022.docx; AFGE Field Work and Emergency Response 06032022.docx; AFGE Fitness Center 06032022.docx; AFGE H&S 06032022.docx; AFGE Human Resource Development 06032022.docx; AFGE Kitchenette 06032022.docx; AFGE Labor Management Relations 06032022.docx; AFGE Medical Examinations 05122022.docx; AFGE Merit Promotion 006032022.docx; AFGE Midterm & Supplemental Negotiations 06032022.docx; AFGE Miscellaneous Facilities 06032022.docx

Marie Owens Powell

President

AFGE Council 238

PHONE: 215-814-3384

<https://www.afge.org/>

<http://www.joinafge.org/>



Employee Counseling and Assistance Program

Section I. General

- A. The Agency and the Union recognize the importance of maintaining an Employee Counseling and Assistance Program (ECAP) for employees with personal or work-related concerns. The ECAP (also known as Employee Assistance Program (EAP)) should be designed to be carried out as a non-disciplinary procedure aimed at assisting and supporting employees who are experiencing health or personal concerns. Counseling through ECAP can help address issues including alcohol or drug abuse, bereavement, crisis intervention, stress, health, family and marital crises, work-life balance, financial issues, and other situations.
- B. The fact that an employee is receiving assistance through the ECAP or from a private provider will not have a negative impact on employee performance evaluations. Participation in the ECAP shall be voluntary.

Section II. Relationship to Performance

The supervisor of an employee who requests assistance through the ECAP or discloses they are receiving assistance from a private provider, shall give consideration to this fact in determining any appropriate disciplinary and/or adverse actions based on the employee's performance or conduct.

Section III. Counselors

The ECAP may include services provided by a provider contracted by the Agency, at no charge to the employee, or referral to an outside professional treatment and assistance source in the local community.

Section IV. Notification

The Agency shall advertise and emphasize the existence and availability of the ECAP in a prominent and permanent location on the Agency and Regional home page and refer those seeking assistance to the ECAP Coordinator. Notification shall include a statement of the purpose of ECAP and contact information for the ECAP Coordinator. In addition, the Agency will notify employees of the ECAP on an annual basis. Although the existence and functions of counseling and referral programs shall be publicized to employees, no employee shall be required to participate or be penalized for not participating. If the Agency must discontinue or modify services provided under the ECAP due to staffing or funding limitations, it will notify the Union at least 30 days prior to discontinuation or modification in addition, the Agency will send a mass mailer describing the changes to all employees.

Section V. Confidentiality

Participation in the ECAP and the content of the employee's discussions with ECAP providers

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shall be treated by the Parties as private and confidential unless precluded by law. The Agency may require verification of attendance at an ECAP session when Administrative Leave is being granted for that time.

Section VII. Leave

Initial ECAP consultations will be approved as duty time, providing the employee notifies their supervisor that the time will be used for ECAP consultation. Following an initial consultation, an employee requesting use of the ECAP that requires an absence from duty must obtain the appropriate leave approval or make appropriate arrangements with the supervisor. In order to facilitate the use of the ECAP, employees shall be entitled to Administrative Leave for up to six (6) hours per calendar year. The Agency may approve additional leave, including Administrative Leave, if necessary.

No ECAP participation disclosure to the supervisor is required if the employee elects to use sick leave for all ECAP visits.

Employee Rights

Section I. Right to Union Membership

- A. Pursuant to 5 U.S.C. Section 7102, each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.
- B. Employees temporarily assigned to a managerial or supervisory position or a position outside the bargaining unit may not serve as a Union representative and are temporarily outside of the bargaining unit.

Section II. Right to Private Lives

Subject to applicable law, rule, and regulation, employees shall have the right to direct and/or fully pursue their private lives, personal welfare and personal beliefs without interference, coercion or discrimination by the Agency so long as such activities do not conflict with job responsibilities. Managers are expected to respect the privacy of their employees, protect confidential information regarding their employees, and only share such information with individuals with a “need to know.”

As applicable to the employee’s position, the Right to Private Lives includes but is not limited to the following:

- A. 1st Amendment Right to Freedom of expression on social media platforms while not duty time or Agency equipment;
- B. Free from electronic monitoring while not on duty time or Agency equipment;
- C. Holding confidential the basis for which annual or sick leave is requested and/or used;
- D. Freedom of association, right to protest and/or march;
- E. Workplace free from search and seizure without probable cause, including review of email traffic, keystrokes, use of video surveillance, etc.; and
- F. Not being required to work for no compensation, including but not limited to accepting telephone calls, text messages, etc. outside of duty time.

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Section III. Merit Systems Principles

The Agency will abide by the Merit System Principles set forth in 5 U.S.C. 2301(b) (1) through (9). Merit System Principles include but are not limited to the following:

- A. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
- B. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
- C. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
- D. All employees should maintain high standards of integrity, conduct, and concern for the public interest.
- E. The federal workforce should be used efficiently and effectively.
- F. Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards. G. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
- G. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
- H. Employee's should be—
 - (1) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
 - (2) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for election.
- I. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—
 - 1. a violation of any law, rule, or regulation, or
 - 2. mismanagement, a gross waste of funds, an abuse of authority, or a substantial

and specific danger to public health or safety.

Section V. Prohibited Personnel Practices

The following personnel practices are prohibited pursuant to 5 U.S.C. 2302(b)(1) through (14) and are quoted verbatim:

1. discriminate for or against any employee or applicant for employment—
 - a. on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);
 - b. on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
 - c. on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
 - d. on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
 - e. on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
2. solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—
 - a. an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
 - b. an evaluation of the character, loyalty, or suitability of such individual;
3. coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
4. deceive or willfully obstruct any person with respect to such person's right to compete for employment;
5. influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
6. grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
7. appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative

[PAGE]

(as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

8. take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

a. any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) any violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

b. any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) any violation (other than a violation of this section) of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

9. take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

a. the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—

(i) with regard to remedying a violation of paragraph (8); or

(ii) other than with regard to remedying a violation of paragraph (8);

b. testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A)(i) or (ii);

c. cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

d. refusing to obey an order that would require the individual to violate a law, rule, or regulation;

10. discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

[PAGE]

11. (A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;

12. take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title;

13. implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."; or

14. access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13). This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

Section VI. Additional Principles

The Union and the Agency further agree to the following principles:

- A. Assign Work and Direct Employees: This Agreement is not to be interpreted or applied by the Union or by an arbitrator to prevent, limit or interfere with management's reserved right to assign work, including determining the method and manner to assign work and direct employees, except as provided by 5 USC 7106(b)(2) and (3) unless otherwise

[PAGE]

negotiated.

1. The Agency will provide direction in an atmosphere that will avoid public embarrassment or ridicule.
2. Employees should discuss conflicting orders with their immediate supervisor to resolve the conflict. Employees will have the right to Union representation.
3. Managers will provide sufficient training for the duties employees are assigned and distribute workloads equitably based on the employee's grade and without favoritism.

B. Working Conditions: The Union recognizes the Agency's right to assign work.

1. The Agency will not subject any employee to intimidation, coercion, harassment, or unreasonable working conditions as reprisal nor shall any employee be used as an example to threaten other employees.
2. The Agency will provide all employees equal access to training, tools, materials, meetings, and information requested to effectively perform their job.
3. Manager Accountability. When an employee perceives inequity in working conditions, the employee or Union representative can request and the Agency shall:
 - a. Provide employees impacted by negative working conditions an opportunity to participate in a 360 assessment of the responsible manager(s) within 30 calendar days of the request. The results of the 360 assessment(s) shall be provided to the employee and the Union within 10 business days.
 - b. Provide a Human Resource Management assessment per Standard Operating Procedures number 18-001S, dated January 3, 2018 when disparities exist. Interviewees will include (where appropriate): Employee Groups, First-line and second-line supervisors, Senior managers, Program Management Officer and/or staff, Regional Human Resources Officer and/or staff, Union Officials, Training Officer or staff. The assessment will be conducted within 30 calendar days of request in accordance with the Standard Operating Procedure. The Agency will provide the final report (e.g., a report that includes assessment findings, required actions and recommended action that need to be addressed), within 10 business days of report completion to the subject, the employee and the Union. The identification of the employee requesting the assessment will remain confidential.

C. Service of a Warrant or Subpoena: If an employee is to be served with a warrant or subpoena, to the extent it is within the Agency's control, the service will be done in private without the knowledge of other employees.

D. Supervisory Instructions and Orders: Supervisors will provide instruction in an atmosphere that will avoid public embarrassment or ridicule. When employees receive

[PAGE]

conflicting orders, they should discuss the matter with their immediate supervisor to resolve the conflict.

1. Employees may refuse work if they reasonably believe that an order or instruction patently violates any law, rule, regulation or Agency policy. The employee should state their beliefs to their supervisor. Supervisors will ensure that all orders and instructions are consistent with law, rule, regulation or Agency policy.
 2. The employee may document their belief that the order or instruction violated one or more laws, rules, regulations or Agency policies. If an employee refuses to carry out an order or instruction promptly and the Agency takes an adverse personnel action against the employee as a result of such refusal, that employee may assert as a defense that they believed the order or instruction to be illegal. An employee will not be subject to discipline on the basis that the employee carried out the order of the supervisor.
- E. Personal Belongings and Agency Equipment: The Agency will provide for the secure storage of personal belongings. When new furniture is installed, the furniture will contain lockable, secure space for the storage of personal belongings. The Agency is not responsible for personal belongings brought to the workplace by an employee. Any search of these accommodations must be done in compliance with applicable law, rule and regulation. Employee's personal belongings may not be searched without probable cause and notice.
- F. Resign/Retire: An employee may resign or retire at any time, to set the effective date of their resignation or retirement, and to withdraw their resignation/retirement at any time before it has become effective. The Agency may accept or deny an employee request to withdraw a resignation/retirement before its effective date. An employee will be informed of the reason(s) when a request to withdraw a resignation/retirement is denied. Reasons to deny a request include, but are not limited to, administrative disruption, the hiring or plans to hire a replacement, the acceptance of a VERA/VISP signified by submitting retirement forms to HR, and the presence of an executed settlement agreement.
1. When an employee is faced with the prospect of Employer-initiated action such as termination or removal, the employee shall have the right not to resign or, if the employee chooses, to make a resignation effective at any time prior to the effective date of the Employer's action. When authorized by a settlement agreement, the employee's record shall only state that they resigned; no reference shall be made to such action occurring "for cause" when an employee voluntarily resigns. The employee will be advised that they may consult with a Union representative and have a representative present prior to making a decision. This advice will be acknowledged in writing by the Agency and the employee. A copy of this acknowledgment will be provided to the employee and the Local Union. Resignations shall not be secured by coercive or deceptive means.

- G. **Methods to Evaluate Employees:** Employees are entitled to accurate and truthful evaluations of performance. Evaluations shall be conducted by a subject matter expert and provided to the Union upon request in cases where employees are considered for disciplinary action(s) including removal and/or placed on a performance assistance plan or performance improvement plan.
1. Employees have the right to document any difference of opinion regarding their evaluation. The employee may place materials reflecting the difference of opinion in the evaluation file (e.g., PARS, PIPs) and also may submit such materials as a rebuttal to the employee's next performance appraisal.
 2. The Agency shall not monitor the employee's activity on the Agency system (currently MS Teams) as part of the evaluation process.
- H. **No Recording Protected Union Activity:** No recording will be made without mutual consent of any conversation involving 5 U.S.C. 7102 protected Union activity.
- I. **Recording Other Conversations:** No recording will be made without mutual consent of any conversation. This provision does not apply to training sessions.
- J. **Outside Employment:** Employees may work at outside employment only when consistent with applicable law, Government-wide regulations, do not conflict with job responsibilities, and do not raise a real or an apparent conflict of interest. Approval for outside employment will only be required when such employment would be reportable on OGE-450 Form as a potential conflict of interest. When Agency approval of outside employment is required, the Agency agrees to approve or disapprove an employee's written request to engage in outside employment within ten (10) business days. The Ethics Officer or designee will respond in writing and if the request is denied, the justification for denial will be included.

Section VIII. Right to Obtain Information

- A. **Right to Voice Concerns:** If the employee wishes to discuss a condition of employment, working conditions or potential grievance with a Union representative, the employee shall have the right to contact and meet with the Union representative on duty time.
- B. Employees shall also have access to management officials on duty time and in accordance with this Section. Employees have the right to communicate with the following:
1. Any management official;
 2. The Human Resources Office;
 3. An Equal Employment Opportunity Specialist or Officer and/or an Equal Employment Opportunity Counselor; and
 4. The Financial Management Officer or designee on matters directly affecting the

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employee.

Section VIII. Employee Examinations

- A. If an employee requests Union representation under this Article and a Union representative is not available, the examination will be rescheduled as soon as practicable, but not to exceed five (5) workdays in order to secure a Union representative.
- B. Any discussion with employees by representatives of the Agency which may reasonably be considered by an employee to lead to disciplinary action will be conducted in private. At any meeting referred to above, the Agency agrees:
 - 1. To inform the employee in advance of the meeting, of the general subject of the interview, including whether or not it is criminal in nature; and
 - 2. That the interview will be scheduled to allow the employee an opportunity to seek the counsel of a Union representative and to prepare for the investigatory interview.
 - 3. An employee cannot be disciplined for remaining silent unless they are informed that his responses and their fruits cannot be used against him in a criminal matter (Kalkines Rights).
 - 4. An employee retains their right against self incrimination in criminal matters (Garrity Rights)
- C. Employees shall be given any warnings required by law to protect their constitutional privilege against self-incrimination in criminal proceedings. Refusal to respond to questions based on a proper invocation of the privilege against self-incrimination in a criminal proceeding may not be used as the sole basis for a disciplinary or adverse action. The Agency may determine, in circumstances potentially involving criminal misconduct, that it is necessary or desirable that employees being interviewed be required to respond to questions concerning misconduct or face disciplinary/adverse action, provided that the employees are informed that their answers cannot be used to incriminate them.
- D. When employees are given a warning, they shall be given a "Statement of Rights and Obligations." Employees will acknowledge on the statement the receipt of the above warning. Employees may acknowledge on the statement the receipt of this warning. Employees shall be given a copy of the statement for their records. The employee's acknowledgment indicates only that the employee received the warning. It does not constitute a waiver of an employee's rights against self incrimination or the employee's admission of any wrongdoing by the employee.
- E. When an employee being interviewed is accompanied by a Union representative, the role of the representative includes:
 - 1. Requesting that the interviewer clarify questions;
 - 2. Clarifying responses provided by the employee;
 - 3. Assisting the employee in providing favorable extenuating facts;

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4. Suggesting other employees who may have knowledge of relevant facts; and
5. Advising and/or conferring privately with the employee during the course of the meeting.

At the conclusion of the interview, the Union representative and employee may meet to determine if there are additional facts the employee would like to bring to the interviewer's attention and correct or clarify the transcript/notes of the meeting.

- F. All rights and privileges apply whether the employee examination is in person or virtual or by other means.

Section IX. Rights

- A. Whistleblower Rights. The Agency shall annually inform the employees of their rights under the Whistleblower Protection Act and their rights to be protected from retaliation and prohibited personnel practices. The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 and the U.S. Office of Special Counsel (OSC)'s Reauthorization Act of 2017 further enhance and reinforce these protections. The Parties agree that education on employee rights may be supported and enhanced by the training activities conducted by the Joint Union-Management Scientific Integrity Advisory Board.

Whistleblowing is defined as the disclosure of information an employee reasonably believes evidences:

1. A violation of any law, rule or regulation;
2. Gross mismanagement;
3. Gross waste of funds;
4. An abuse of authority;
5. A substantial and specific danger to public health or safety; or
6. Censorship related to scientific research or analysis.

Whistleblowers or employees engaging in whistleblowing activity may request Union representation at any time, and may choose to go to the OSC¹ or the Agency's Inspector General (IG) for issue resolution.

- B. Weingarten Rights. Agency shall inform employees each year on May 1st or the workday closest to May 1st of their Weingarten Rights via email.

B..

1. Agency or the Inspector General shall inform the Union and the employee three days in advance of any meeting if Weingarten Rights will be read.

¹ The OSC is an independent agency protecting federal employees from prohibited personnel practices, including whistleblower retaliation and unlawful hiring practices. OSC provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies.

2. Any examination of an employee by a representative of the Agency in connection with an investigation where there is a reasonable belief by the employee that the examination may result in disciplinary action against the employee, the Union and the employee will be provided three days advance notice of the meeting that union representation may be considered. If the employee requests Union representation, the employee has the right to Union representation in the meeting.
3. If during any examination of an employee by a representative of the Agency in connection with an investigation there is a reasonable belief by the employee that the examination may result in disciplinary action against the employee, the employee may stop the meeting and request union representation. If the employee requests Union representation, the employee has the right to Union representation in the meeting.
4. Security clearance meetings shall be covered by Weingarten Rights.

Section IX. Right of Access to Documentation

- A. In accordance with applicable laws and regulations, employees have the right to be made aware of and receive copies of any information specific to them that is maintained under the Agency's official systems of records as published by EPA in the Federal Register. Upon request, an employee may see such records and have a copy made of them. All such records shall be deemed confidential, shall be viewed or disseminated only to officials/employees with a legitimate administrative need to know, and must be maintained in a secure location.
- B. Employees shall have the right to examine any of their personnel records during their regular work hours. Any Union representative present for the examination of records will be granted official time. The employee shall have the right to prepare and enter on the record, while in duty status, a response to material placed in such records.
- C. Access to the employee's personnel records shall be granted to the employee and/or the employee's representative within three (3) work days of the request if such records are maintained on the premises in which the employee is located or are electronically maintained and are readily available. If the records are not so maintained, the Agency will initiate prompt action to obtain the records from their remote location.
- D. Employees or their personally designated representatives may obtain a photocopy or electronic copy of documents pertaining to the employees with the exception of records restricted by law or Government-wide rule or regulation. Charges, if any, for photocopies supplied shall be in accordance with 5 C.F.R. § 297.206.

Section X. Participation in Voluntary Activities

Employees have the right to participate or decline to participate in voluntary activities publicized by the Agency. The Agency will not require or coerce employees to participate in any way in voluntary activities. Participation or non-participation will not be used to advantage or disadvantage employees.

Section XI. Right to Debt Collection Protection

- A. Employee garnishments will be processed in accordance with the provisions of 5 C.F.R. Parts 581 and 582. The Agency agrees to hold in confidence any and all debt notices and in the event of a dispute between an employee and a private individual or firm with respect to an alleged debt or financial obligation, where the debt is not acknowledged by the employee or reduced to a judgment, the Agency will not act as an arbitrator nor will the Agency take any action against the employee which is not directly related to the debt. This provision does not apply to debts against the United States of America which are considered a just obligation upon presentation to the employee, or to debts incurred on credit cards issued to the employee for use in Official Government business.
- B. Prior to initiating a collection action through salary offset for a debt against the United States, the Agency will provide notice to the employee of the employee's rights as outlined in appropriate regulation, as well as a copy of such regulation.

Section XII. Right to Proper Payment

The Agency agrees that employees are entitled to their proper pay or reimbursement at the proper time in the proper amount. If an employee is overpaid, the Agency will explain to the affected employee the circumstances of the overpayment and will assist the employee in the completion of a Request for Waiver of Claim for Erroneous Payment.

In the case of overpayment or underpayment of net pay due to the error of the Agency, the Agency will expeditiously correct the overpayment, and reimburse the employee any interest and penalties incurred by the employee as a result of the overpayment, to the extent authorized by law, rule and regulation. If the employee is required to reimburse the Agency for overpayment, no repayment will be required until sixty days after the issue is resolved and the employee will be afforded a pay plan equal to the amount of time the Agency was in error.

Section XIII. Right to Notice of Benefits

- A. Notices: The Agency will notify employees using electronic messaging systems designed to send individual notification regarding OPM announcements of the following payroll related events:
 - 1. Open season for the Thrift Savings Plan;

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2. Open season for Federal Employee Health Benefits (FEHB);
3. How to obtain copies of FEHB provider brochures;
4. Timely notice of discontinued service by an FEHB provider; and
5. Notice of any open seasons for Federal Group Life Insurance, and conversion for other pension systems, etc.

B. FEHB and Non-Pay Status: The Agency will comply with applicable law and Government-wide regulations regarding the coverage under the FEHB when an employee is on a non-pay status.

Section XIV. Loss of Information

If an employee's Personal Identifiable Information (PII) is disclosed to an unauthorized, third (outside) party by the Agency, the U.S. government or their agent, the Agency will offer the employee identity theft protection for lifetime.

Section XV. Religious Accommodations

Religious Accommodations shall be provided to employees with a sincerely held religious belief, practice, or observance upon request, as provided by federal and state laws and regulations where they do not provide a hardship to the Agency. Such accommodations may include, but are not limited to, flexible use of time, scheduling and use of leave, including flexible break time, flexible leave use, expanded comp time, use of maxi flex scheduling to include daily prayers, providing a reasonably comfortable and private location for praying, modifications to workplace policies, and other needed and effective accommodations. The presence of and details of a Religious Accommodation shall be confidential between the employee and the Decision-Maker, typically their immediate supervisor.

Equal Employment Opportunity

Section I. General

- A. No employee will be denied a benefit of employment by the Agency, or a benefit or right of unit membership by the Union, because of the employee's race, color, creed, national origin, sex, age, sexual preference, gender identification, Union affiliation, lawful political affiliation, marital status, or qualifying handicapping condition. Both Parties support the realization of a representative workforce within the unit at all levels.
- B. The Parties hereby affirm their support of affirmative action.
- C. Employees are encouraged to discuss EEO allegations with an EEO counselor. Discussions between an employee and an EEO Counselor do not preclude an employee from opting to select the negotiated grievance procedure.

Section II. Agency Committees or Councils

- A. When the Agency, at any level utilizes an EEO committee, or councils, the Union will have at least one representative for each Official Agency Worksite to participate as a committee member on matters affecting employees.
- B. The Union will designate an authorized representative for the Agency to deal with on all EEO matters which are beyond local scope and impact.

Section III. Counselors

- A. The Agency agrees to have no less than one (1) EEO Counselor for every 100 employees at each Official Agency Worksite. Upon the vacancy of any EEO Counselor, the Agency will advertise for volunteers for these positions. The Union will be kept apprised of the current list of EEO Counselors.
- B. Employees who meet the criteria for an EEO Counselor and are selected by the Agency will receive appropriate training in accordance with the applicable policies and regulations.
- C. No Union representative who handles employee representation functions for the union may serve as an EEO Counselor nor may an EEO Counselor serve in a representative capacity for any employee.

Section IV. EEO Complaints

- A. An employee may file either an EEO complaint or a grievance under the Negotiated Grievance Procedure, but not both. An employee filing a formal EEO complaint under the Agency's procedure is entitled to a representative of personal choice subject to Agency policies and regulations. An employee filing a grievance under the Negotiated Grievance Procedure may be represented only by an authorized Union representative.
- B. An employee shall be deemed to have exercised their option in filing an EEO complaint at such time as the employee timely initiates a formal written EEO complaint/notice of appeal under the statutory procedures or timely initiates a grievance in writing in accordance with the Negotiated Grievance Procedure.

Section V. Statistics

The Agency will provide any prepared statistical EEO reports and EEO complaint summaries, including but not limited to the MD-715s to the Union annually. Such reports shall be provided to the Union in January of each year.

FIELD WORK AND EMERGENCY RESPONSE

Section I. Emergency Response Procedures

Regional emergency response procedures including Response On-Scene Coordinator, R1, R2, Backup, Phone Duty Officer, schedules, duty roster and other procedures and policies constituting emergency response procedures are a subject for local bargaining.

Section II. Union Apparel in the Field

Unless the Agency has issued field apparel, the employee can choose what clothing and accessories to wear in the field. Union logo signs, buttons, shirts, and accessories are permitted in the workplace, including the field.

Section III. Site Purchasing - Buy American, Buy Union

Where Agency field staff have input on purchasing in the field (e.g., Superfund Sites, GLRI projects), the Agency will encourage the purchase of materials and supplies made in the USA pursuant to EO 14005 and that are Union made regardless of costs.

Section IV. Driving and Travel

- A. The Agency shall not monitor or track employees driving by means of GPS or other type monitoring devices.
- B. The Agency will only require employees to drive if they have had at least 8 consecutive hours off duty before beginning a work shift. Employees will not be required to work and drive more than 12 hours in a 24-hour period or drive more than 10 hours including commuting drive time, and drive no more than 4 hours without a rest stop of at least 15 minutes.
- C. While on Temporary Duty status (TDY), employees may use government owned vehicles for common travel e.g., grocery store, pharmacies, restaurants, gym etc.
- D. When on Temporary Duty status (TDY), employees are free to choose their lodging in accordance with laws and regulations and will not be forced to stay at Agency designated lodging facilities. Exceptions may include when lodging is provided as part of a conference, training or other similar event.
- E. Employees will be permitted to use personal vehicles or individual rentals due to pandemic or health concerns. Employees using personal vehicles will be reimbursed at the standard mileage rate.
- F. On vouchers following travel, no receipts for items under \$75 is required.

Section V. Picket Line

- A. Employees shall not be required to cross through a picket line. If employees are confronted with a picket line in reporting for work either at an Official Agency Worksite or in the field, they may leave the picket line area and then contact the supervisor to discuss alternate options.

Section VI. Undue Risk

- A. Employees may decline to perform assigned tasks or travel based on the employee's judgment and reasonable belief that under the circumstances the task poses a risk of death or bodily harm, mental harm, coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. Such risk may be caused by failure of the Agency to provide appropriate protective clothing and/or equipment, threats from individuals (both physical and sexual), unsafe working conditions, potential harmful exposures or inadequate training.
- B. No employee will be required to travel alone unless they choose to do so. No employee will be forced, pressured, or coerced to travel alone by any Agency official. Generally field work will be done in pairs.

Section VII. No Negative Impact

- A. Employees will not be disciplined, suffer a negative inference, be penalized in their performance review or otherwise or retaliated against for any declination pursuant to this Article.

Fitness and Wellness Centers

Section I. Provision of Onsite Fitness and Wellness Center

Management and Union agree that for the health and efficient operation of the Agency, the Agency will provide access to a Fitness and Wellness center for Agency locations with 25 or more employees, consistent with applicable law. The Fitness and Wellness Center will be available to all employees at that location regardless of Telework or Remote Work status. For Agency locations with less than 25 employees, the Agency will provide a stipend up to \$25 per month. Specifics of fitness and wellness centers are matters for local level bargaining.

The Agency shall include appropriation requests for Fitness and Wellness Centers in its annual budget.

Section II. Employee Contributions

The Parties recognize that some of the activities of the Fitness and Wellness center developed and implemented pursuant to this Article may involve, in part or in whole, employee financial contributions as well as the use of non-duty hours for participation. This is a matter for local level bargaining.

Section III. Positions Requiring Fitness

Employees who are required by the Agency to maintain a high level of physical fitness for the performance of their duties may be granted five (5) hours duty time per week for exercise.

Section IV. Geographic Factors

Due to geographic areas and facilities in several locations within one geographic area, the Parties agree that provisions for fitness and wellness centers are a matter for local bargaining.

Health, Safety, and Wellness

Section I. Agency Locations, Buildings, and Worksites

The Agency shall furnish to each employee a place of employment which is free from recognized hazards and provide a working environment consistent with appropriate health and safety standards that emphasizes employee wellbeing and at a minimum complies with OSHA, ANSI/ASHRAE Standards, EPA Occupational Safety and Health Standards, regulations, Orders, and all other applicable Safety and Health regulations consistent with all applicable federal, state, and local laws.

- A. At all Official Agency Worksites, the Agency will work with General Services Administration (GSA), state and local officials to ensure the personal safety of employees when commuting to and from Agency locations.
- B. If any official Agency worksite provides automobile and/or bicycle parking, the Agency shall provide adequate safety lighting, sidewalks and street marking for employees' safe use of the parking facility.
- C. The Agency will ensure adequate safety lighting, sidewalks, walkways, and markings and other additional measures, which may be bargained locally, for employees' safe use of entrances and public transit connections to Official Agency Worksites. The Agency shall ensure safe egress and ingress to all facilities that are free of hazards including but not limited to trip hazards, falling debris, and slick conditions caused by weather events.
- D. If the Agency utilizes GSA automobiles stored in a GSA contracted non-federal facility which employees must enter to retrieve or return GSA automobiles, the Agency will obtain a confirmation in writing from the applicable regional GSA Director that GSA has carried out a safety inspection of the facility at least annually to obtain confirmation as part of its contracting process that the non-federal automobile parking facility meets or exceeds industry standard for users' personal and traffic safety.
- E. When the Agency cannot provide a workspace and safe egress and ingress consistent with any section of this article, it will make alternative arrangements which may include temporary relocation of employee(s) or telework/remote work in accordance with those Articles.

Section II. Employee Training and Safety Equipment

- A. Personal Protective Equipment (PPE) shall be provided, maintained, and replaced by the Agency at no-cost to the employee. The Agency shall provide PPE to employees whenever such equipment is determined to be required by a hazard assessment through a comprehensive safety and health program, and for protections against exposures to occupational hazards and risks, hazardous chemicals, and biological or radiological materials which could cause illness or injury, as defined under OSHA, HHS, NRC and other applicable regulations, recommendations, and guidance.
- B. The Agency will provide training on the use, care, and maintenance of PPE, and an annual evaluation of the effectiveness of the PPE program. Employees will attend such training

during duty time. The training will ensure the employee's ability to:

1. properly wear and use Agency provided PPE and other health and safety devices;
 2. provide the proper care and routine cleaning to help maintain the PPE; and
 3. inform supervisors of the need to repair or replace PPE.
- C. Safety-toed footwear shall be worn by employees who work in a designated foot hazard area. The Agency shall provide each field employee a yearly safety-toed footwear allowance of \$500.
- D. The Agency shall provide foul weather gear for staff engaging in field activities. The Agency shall provide each field employee a yearly field clothing allowance of \$500 (separate from safety-toed boot allowance).
- E. The Agency shall make available field clothing visibly displaying the EPA logo and or name.
- F. The Agency shall provide a time and place for employees to bring their PPE for inspection review and maintenance during duty time.
- G. The Agency shall provide fit testing for employees required to wear respirators. Fit testing will be done annually, and employees may request a fit test at any time they determine one is needed or when respiratory protection PPE has changed in accordance with OSHA 1910.134.
- H. The Agency will ensure specialized training for employees based on job requirements such as confined space entry, attendant, supervisor, rescue, SCBA, equipment operation, etc.
- I. The Agency will provide annual active shooter training. Additional training that addresses actions when a gun is present when conducting Agency business in the field. Both training will be available to all employees. The Union will be included in discussions and training planning regarding active shooter training, including debriefing following the training.

Section III. Protection from Undue Risk

- A. Employees may decline to perform assigned tasks or travel based on the employee's judgment and reasonable belief that under the circumstances the task poses a risk of death or bodily harm, mental harm, coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. Such risk may be caused by failure of the Agency to provide appropriate protective clothing and/or equipment, threats from individuals (both physical and sexual), unsafe working conditions, potential harmful exposures or inadequate training.
- B. Employees shall not be required to cross through a picket line. If employees are confronted with a picket line in reporting for work either at an Official Agency Worksite or in the field, they may leave the picket line area and then contact the supervisor to discuss alternate options.

- C. Employees shall not be required to cross through a demonstration or protest when reporting for work either at an Official Agency Worksite or in the field. The employee may leave the area and then contact the supervisor to discuss alternate options.
- D. No employee will be required to travel alone unless they choose to do so. No employee will be forced, pressured, or coerced to travel alone by any Agency official. Generally field work will be done in pairs.
- E. Employees will not be disciplined, suffer a negative inference, be penalized in their performance review or otherwise or retaliated against for any declination pursuant to this Article.

Section IV. Medical Monitoring and Testing

Employees may be required to undergo an Occupational Medical Surveillance Program (OMSP) examination.

- A. Medical Monitoring shall be provided at no-cost to the employee if the employee is required to wear respiratory protection or if the employee may be exposed to physical, chemical, biological, or radiological hazards.
- B. The Agency shall determine fitness for duty solely through the OMSP exam and doctor sign-off. No Fitness Standard requiring direct evaluation of the employee's aerobic or cardiovascular fitness, or muscular flexibility, or similar physical fitness tests of physical endurance (e.g., pushups, sit-ups, running) shall be required nor shall an employee's age, weight or height be used as a factor in determining physical fitness.
- C. The Agency shall immediately provide all necessary medical testing for any exposure(s) regardless of the routine medical monitoring schedule. All such analysis will be provided by the Agency.
- D. If not routinely provided by the Agency, the employee can request specific exposure analysis during routine medical monitoring. All such analysis will be provided by the Agency.
- E. The Agency shall provide any vaccination as recommended by the CDC or posed workplace hazards, including, but not limited to: diphtheria, tetanus, and pertussis (DTaP) or Tetanus, diphtheria, and pertussis (Tdap); Hepatitis A; Hepatitis B; Flu (Influenza); Adenovirus; Anthrax; Cholera; Japanese Encephalitis (JE); Rabies; Smallpox; Tuberculosis; Typhoid Fever; Yellow Fever and COVID-19.
- F. On request, the Agency shall provide employees copies of their own medical records. An employee's own medical records shall be provided to the employee within 30-days upon request. Please refer to the Medical Examination Article.
- G. Where available under existing public health or wellness programs, the Agency will offer

the opportunity for employees, not covered by the Occupational Medical Surveillance Program, to voluntarily participate in general physical examinations.

Section V. Safety, Health and Environmental Management (SHEM) Program

- A. The Agency agrees to assign a Safety, Health and Environmental Management (SHEM) program coordinator for each Agency location. SHEM program coordinators shall visit each location for which they are responsible at least 16 hours per month. Every SHEM program coordinator shall be responsible for no more than 250 employees.
- B. The Agency agrees to provide the names and 24-hour contact information for the SHEM program coordinator at the applicable location and other officials having responsibilities in the Safety and Health program. The SHEM official will be authorized to approve and pay immediate medical costs for employees who are injured in the course of duty. The employee shall not be required to pay any costs out-of-pocket or use their own insurance (see Workers Compensation Article).

Section VI. Safety and Health Committees

- A. A safety and health committee will be established at the national and local levels. Such committees will include an AFGE representative. As per local agreements safety and health committees may form subcommittees that will also have a local AFGE member serving as a representative.
- B. Each member will have full voting authority and equal standing. Membership in each Safety and Health Committee will include:
 - 1. at least one (1) AFGE representative appointed by AFGE. The AFGE representative will be provided official time to attend meetings and will receive the same training opportunities afforded to other committee members;
 - 2. a representative from each Official Agency Worksite including but not limited to satellite offices, laboratories, etc.; and
 - 3. Safety Health and Environmental Manager (SHEM).
- C. The Parties agree that all confidential information will be protected and treated accordingly.
- D. Each Local Safety and Health Committee shall meet at least once every calendar month.
- E. The scope of the Local Safety and Health Committees include, but are not limited to:
 - 1. Recommendations to improve the wellbeing of employees, including healthy vending machine options, promoting physical fitness, and soliciting ideas from employees, discussing building issues, pest concerns, cafeteria, laboratory and office inspections, building security, specific personal safety as well as transient building issues or incidents including but not limited to spills, water intrusion and air quality concerns.
 - 2. Formation of temporary or permanent subcommittees with relevant expertise to

address specific health and safety issues or incidents. All such subcommittees shall include an AFGE representative and will report to the primary Safety and Health Committee. The AFGE representative will be provided official time for participation on these subcommittees.

3. Recommendations to the appropriate authorities with regard to Agency occupational safety and health, in accordance with 29 C.F.R. Part 1960, Subpart F.

F. Any reports, documents or written agreements created by the Safety and Health Committee, or subcommittees shall include a signature of the AFGE representative.

G. Where AFGE representatives formally join a Field Federal Safety Council, they will participate on duty time.

Section VII. Timely Notification of Safety and Health Inspections, Tests, Hazards, and Incidents

- A. When a formal safety and health inspection is conducted of any Agency facility AFGE will be notified in advance and, upon request, be permitted to accompany the inspection team. For inspections by organizations outside the Agency, AFGE will be notified as soon as practicable and permitted to accompany the outside inspection team. Safety precautions will be followed during these inspections.
- B. In responding to a specific safety and health concern, including but not limited to air quality, radon, pinch points, slips, trips and falls, active shooter, pests, rodents, reports of insects or bug bites, mold or other unsafe working conditions, the Agency shall notify AFGE immediately. The Agency shall conduct an inspection to determine corrective actions. The Agency will notify AFGE immediately and will be provided a briefing on the results of the inspection and corrective actions identified and taken or scheduled to be taken. In addition the Local will be provided written copies of all reports and documentation with personal information redacted as necessary.
- C. The Agency shall notify AFGE and all potentially affected employees immediately but no later than one (1) day of safety and health incidents that could have exposed workers to chemical, radiological, biological or other risks. All employees in an Official Agency Worksite facility shall be notified of incidents occurring at that worksite including chemical or radiological spills, cases of contagious diseases, food borne illness reported from food sold onsite, legionnaires disease outbreaks, active shooter incidents in the building and within 200 feet of the building and other public safety incidents. Each Official Agency Worksite shall maintain a system which allows employees to report such incidents and for keeping records of each report. Employees shall be informed quarterly via email on how to report such incidents.
- D. Employees shall report any work-related health and safety incidents and concerns relating to but not limited to accidents, illnesses, near-misses, and threatening incidents to the supervisor.
- E. Pursuant to 5 USC 7114 (b)(4), the Agency must provide the Union a copy of testing results and all reports of Safety and Health inspections, accidents, indoor air quality, radon,

drinking water quality, occupational illnesses, lead hazards and food-borne illness from onsite food sales unless prohibited by the Privacy Act or other applicable law. Any information given to the Union may be further sanitized or redacted by mutual agreement.

- F. The Agency will address, and remedy all reports of employee accidents, illnesses, near misses, and threatening incidents in accordance with OSHA Record Keeping is 29 CFR 1904. All such reports will be kept confidential in accordance with law and regulation.
- G. The Agency will not retaliate against employees for reporting safety and health issues.
- H. The Agency will provide to the Union access to any Safety Data Sheets (SDS) for chemicals to which employees may be exposed while on tour of duty.

Section VIII. Indoor Air Quality

- A. The Agency will notify the Local Union when indoor air quality testing and monitoring is being conducted. Any testing or monitoring report and/or results of the quality of air in employee occupied space will be provided to the Local Union by the Agency immediately upon receipt.
- B. Official Agency Worksites shall comply with OSHA and adhere to the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards including 62.1-2019 and 55-2020. Official Agency Worksites will be kept at reasonable temperature and relative humidity for the types of work being conducted (i.e. temperature may be cooler in warehouse spaces than in office spaces). In all office spaces, indoor temperature should remain in the range of 65 degrees F – 70 degrees F. Temperatures shall be maintained at the level appropriate for activities and functions within non-office spaces. If standards and reasonable temperature conditions cannot be met, employees will be permitted to use situational telework until the issue(s) has been resolved. Employees without portable work will be granted administrative leave.

Section IX. Driving and Travel

- A. The Agency will only require employees to drive if they have had at least 8 consecutive hours off duty before beginning a work shift. Employees will not be required to work and drive more than 12 hours in a 24-hour period or drive more than 10 hours including commuting drive time, and drive no more than 4 hours without a rest stop of at least 15 minutes.
- B. The Agency shall not monitor or track employees driving by means of GPS or other types of monitoring devices.
- C. Employees will be permitted to use personal vehicles or individual rentals due to pandemic or health concerns. Employees using personal vehicles will be reimbursed at the standard mileage rate.
- D. While on Temporary Duty status (TDY), employees may use government owned vehicles

for common travel eg: grocery store, pharmacies, restaurants, gym etc.

- E. When on Temporary Duty status (TDY), employees are free to choose their lodging in accordance with laws and regulations and will not be forced to stay at Agency designated lodging facilities. Exceptions may include when lodging is provided as part of a conference, training, or other similar event.
- F. No receipts for items under \$75 are required on travel vouchers.

Section X. First Aid and Emergency Medical Equipment

- A. All official Agency worksites will have first aid supplies onsite for medical emergencies. In addition, all facilities shall have defibrillators, stop-the-bleed kits, epinephrine pens (epi-pens), and Naloxone (Narcan) available onsite. First aid supplies, defibrillators, epi-pens, and Naloxone will be located in visible and accessible locations. There shall be at least one first aid kit, defibrillator, epi-pen, and Naloxone per every 70,000 square feet of building and in every free-standing building of at least 20,000 square feet in size. First aid kit supplies, epi-pens, and Naloxone should be promptly refilled after they have been used and replaced upon expiration. Defibrillator batteries should be checked routinely per manufacturer specification and shall be charged or replaced when low.
- B. The Agency will provide training on the use of defibrillators, stop-the-bleed kits, epinephrine pens (epi-pens), and Naloxone.

Section XI. Smoking and Vaping Policy

- A. Smoking shelters or designated outdoor smoking areas are subject to local bargaining.
- B. The Agency shall sponsor or provide ongoing smoking cessation programs. Employees will be provided the opportunity to participate in the Agency's smoking cessation program, at no cost to the employee. Employee participation is voluntary.

Section XII. Safe Workloads

The Agency and the Union are committed to the Agency mission to protect human health and the environment. This can only be accomplished when employee workloads are maintained at a level to ensure timely, thorough, and accurate work.

- A. The Agency agrees to review each employee's workload at least twice a year during mid and end of year reviews to take account of work complexity, individual capacity and time needed to complete the assigned work in a manner that protects human health and the environment.
- B. The Agency will solicit the employee's assessment regarding their workload. The employee's statements concerning workload will not be considered for the purpose of performance evaluation.

- C. The Agency will take action when workload demand exceeds staffing capacity (eg, workload reassignment, extending deadlines, increasing staff, re-prioritization of program goals, etc.).
- D. Employees shall not be required to perform work outside of their approved tour of duty in order to complete assigned workload. Managers shall approve overtime or reduce workload when assigned work cannot reasonably be accomplished during an employee's regular tour of duty. Refer to Overtime Article.

Section XIII. Emergency Response Procedures

Regional emergency response procedures including Response On-Scene Coordinator, Responder 1, Responder 2, Backup, Phone Duty Officer, schedules, duty roster and other procedures and policies constituting emergency response procedures shall be subject to local bargaining.

Section XIV. Employee Safety and Health During Disaster Deployment

- A. During disaster employment, Agency actions will be taken with the safety of employees as a first priority.
- B. The Agency shall provide safe alternative accommodations when hotels are incapacitated and unavailable.
- C. All temporary housing (such as trailers and campers) shall be safe, clean, have safe indoor air quality, sanitary and free of environmental hazards.
- D. The Agency shall ensure access to clean drinking water.
- E. The Agency will provide hazard duty pay in accordance with law and regulation.
- F. The Agency shall assist injured and ill employees during a disaster deployment in accessing adequate and timely medical care including providing e transportation and evacuation of injured and ill employees when necessary.
- G. If the safety and health conditions above can not be met, the employee has the right to terminate the deployment without retaliation. The Agency will make arrangements for the safe return of the employee at the Agency's cost.

Career and Professional Development (Mentoring and Training)

Section I. Introduction

- A. The purpose of training and career development is to enable employees to increase their knowledge, proficiency, ability, skill, and qualifications in the performance of their official duties. It is understood that the choice of subject matter, areas for training, selection, and assignment of training is a function of management and the program will be administered in accordance with applicable laws, regulations, and Agency policies.
- B. The Agency will implement Future of Work concepts and responsibilities that drive resources and attention to creating a truly inviting and inclusive space, with a commitment to providing all employees with:
 - 1. Challenging work;
 - 2. Equal pay and benefits;
 - 3. Career development support; and
 - 4. Authoritative knowledge in the performance of their specific jobs.

Section II. Self-Development

- A. Self-development requires the dedication of an individual's personal time and resources. The Parties jointly recognize that responsibility and encourage employees to make such personal commitments. The Agency will not bear the cost of any self-development training that has not been approved in advance as required by Agency regulations. Where an employee's self-development effort is related to their official duties, management will support the employee's self-development to the extent practicable in accordance with applicable laws and Agency policies.
- B. Employees may be reimbursed for college tuition expended on an approved course with a nexus to the employee's position of record and/or the Agency mission subject to the availability of funds. The supervisor may grant schedule flexibilities to accommodate attendance.
- C. The Agency may contract with outside vendors or partner with outside organizations to offer self-development classes, sessions, etc. for employees (e.g., toastmasters, coaching, etc.).

Section III. Career Shifts

The Agency will support employees through career shifts within the Agency, including considering employee requests for additional training to develop new skill sets related to career changes, including mid-level career changes (e.g., FEB leadership, Peak Performance Program, or other leadership programs). Participation in particular programs will not be a prerequisite to promotion.

Section IV. Documenting Denial of Training Requests

Requests for training will not be unreasonably denied. When the employee requests training, the reason(s) for disapproval of a training request will be given to the employee in writing (via email).

Section V. Employee Training Attendance

The Agency will consider employee requests for variations in their normal work schedules for educational purposes. The Agency's ability to carry out its activities in a timely manner and benefits of the additional education will both be factors in the Agency's consideration of such requests. Requests for variations in employee work schedules for educational purposes will not be unreasonably denied.

Section VI. Professional and Career Development

As part of a career development program, the Agency agrees to implement a Professional Development Series (PDS) training module that each employee has the option to participate in, which will assist employees to perfect the skills needed for successful job performance. The PDS will comprise of modules currently in the EPA University website ([HYPERLINK "https://usepa.sharepoint.com/sites/EPAU/SitePages/Career-Development.aspx?xsdata=MDV8MDF8fDBiODczM2FIMjE0ZTQzZDA1NmU4MDhkYTQ0YjI2MTNjfdG4YjM3OGIzNjc0ODQ4NjdY2Y5NzZhYWNiZWVhNmE3fDB8MHw2Mzc4OTc4MzAxNTI1NTgzMTJ8R29vZHxWR1ZoYlhOVFpXTjFjbWwwZVZObGNuWnBZMIY4ZXlKV0lqb2lNQzR3TGpBd01EQWlMQ0pRSWpvaVYybHVNeKlpTENKQIRpSTZJazkwYUdWeUlpd2lWMVFpT2pFeGZRPT18MXxNVGs2YldWbGRHbHVMTIOZWtKb1drUlplNRTR5UlhST2VsaZBXa013TUUxWFNtMU1WR3h0V1dwbmRFOVVaM2xaZWtKcFQwUjZORTVVWnpKQWRHaHlaV0ZrTG5ZeXx8&sdata=bERHMFJmcllyd0Nwc0NJMnF5UjlpT25DY1lQazZ1TXlkV3VKdlowZW1MOD0%3D&ovuser=88b378b3-6748-4867-acf9-76aachbeca6a7%2COWens.Mariejr%40epa.gov" \h]) that could be of interest to employees, including but not limited to, performance, time management, oral presentation, negotiation, building capacity, leading a team, and other workplace skills. The employee may choose which of the PDS modules they wish to take. The Parties agree that the PDS will be a valuable tool to develop employees into innovative leaders and to transform the Agency by creating conditions for employees to succeed. Managers will receive training about the Career Development Program and the Professional Development Series and will use it to support employee advancement.

Section VII. FedTalent

The Parties encourage employees to review their training record currently in FedTalent ([HYPERLINK "https://work.epa.gov/training-and-development/fedtalent" \h]) to assure that training is recorded and that the folder is otherwise up to date.

Section VIII. Upward Mobility Program

The Agency will administer its Upward Mobility Program in accordance with applicable laws, Agency policies and the Staffing and Promotions Article of this MCBA.

Section IX. Professional Membership and Continuing Education

Employees required to join and maintain membership in a professional organization as a condition of Agency employment shall have their memberships in such situations paid by the Agency. Employees required to obtain continuing education credits to maintain their membership in a professional organization the Agency will make available continuing education credits to employees. As an alternative, the Agency shall reimburse the employee of up to \$500/year (adjusted for inflation) for continuing education credits costs. Any training requirement to maintain a professional license will be on duty time.

Section X. Mentoring.

All employees can participate in the mentoring program regardless of Remote Work or Telework status. The Parties agree mentorship can occur virtually or in person. No employee will be required to serve as a mentor.

The Agency shall develop a formal mentoring program to connect new employees with other employees and managers to ensure adequate training of employees. The Agency shall also support, develop, and revitalize existing mentoring programs, whether organized by the Agency or by employees, to ensure adequate training of employees and access to knowledge transfer from their peers.

Where an employee's participation in a mentoring program is related to their official duties, it is management's responsibility to support the employee's involvement in the mentoring program to the extent practicable in accordance with applicable laws and Agency policies.

Section XI. Student Loan Repayment Plan

- A. When funds are available, the Agency should implement the Student Loan Repayment Plan in accordance with 5 U.S.C. 5379 and 5 C.F.R. 537 and other government-wide rules and regulations. Implementation of the Student Loan Repayment Program is subject to the availability of funds.
- B. Reporting. Once a year the Agency will provide the AFGE Council 238 President the following:
 - 1. number of employees who were offered and selected to receive student loan benefits pursuant to this Article;
 - 2. name and job classification of the employees selected to receive benefits; and
 - 3. the amount of benefit received by each employee.
- C. Nothing herein precludes the Union from requesting additional information concerning the student loan repayment program consistent with 5 U.S.C. 7114(b)(4).

Employee Pantry/Kitchenette Facilities

Section I. General

The Parties agree that the Agency shall provide pantry/kitchenette facilities for employees that are safe, have ample lighting, are accessible to all, and have signs providing contact information for maintenance, supplies, or accessibility issues. These areas shall be equipped with Agency provided coffee machine(s), microwave oven(s) and refrigerator(s) proportionate to the number of users. Where possible and necessary, a table and chairs will be provided. Employees shall follow the health and safety procedures as provided or directed by the Agency necessary for their protection.

Section II. Vending Machines

The Agency will provide vending machines with foods and beverages where possible. Vending machines will display contact information for obtaining reimbursement for money lost and for reporting malfunctions during work hours.

Section III. Additional Provisions

Local Parties are authorized to negotiate or participate in pre-decisional involvement for additional provisions beyond these minimum requirements.

Labor Management Relations

Section I. Purpose

The matters to be discussed via any local cooperative process should include the following: the discussion of personnel policies, practices and working conditions; the interpretation and application of rules and policies; the establishment of improved employee/management/Union relationships; the prevention of conditions that might lead to misunderstandings and grievances; and the exchange of information designed to enhance labor- management cooperation. These collaborative processes are not intended to resolve individual grievances or complaints raised under the Negotiated Grievance Procedure or appropriate appeals procedure unless otherwise mutually agreed by the Parties.

Section II. General

- A. National forums will be discussed by the Council 238 President and Executive Vice President and Lead Agency Representative. AFGE Council 238 may have its own national Labor-Management Forum or may join a national labor coalition with other EPA unions.
- B. The Parties will approach dealings with each other in an atmosphere of mutual respect and cooperation. Nothing in this agreement is intended to prevent or discourage the Parties from communicating with each other through their duly appointed representatives at all levels. The Parties expressly encourage a continuing dialogue by their representatives in the belief that communication prevents and resolves difficulties.
- C. The Parties at the local level will explore methods to further labor-management cooperation, e.g., local committees, ad hoc joint work groups, etc. The make-up, procedures and processes for such activities are a matter for local level agreement.
- D. The Agency will encourage worker organizing and collective bargaining, not to merely allow or tolerate them. The Agency shall take a comprehensive approach to advance worker organizing and collective bargaining and be a model labor employer. EPA shall mobilize the federal government's policies, programs, and practices to empower workers to organize and successfully bargain with the Agency. The Agency will identify ways to increase worker power in all areas of the Agency, increase Union participation among marginalized workers including women and people of color, and for workers in offices at the Agency that are difficult to organize and lack labor protections.

Section III: Labor Management Committees/Forums

- A. Cooperation and communication have been and remain goals of labor and management. The Agency and the Union are committed to working together at all levels to ensure a quality work environment for employees and effect a more efficient administration of environmental programs. The Parties support and encourage cooperative labor-management relationships at all levels.

- B. The Agency agrees that the employees are empowered through collective bargaining and increased Union density.
- C. The Parties will discuss any relevant topic, including but not limited to:
 - 1. Matters involving personnel policies, practices, working conditions and conditions of employment;
 - 2. Numbers, types, and grades of employees as well as methods, means and technology of work;
 - 3. Participation on labor management committees/forums;
 - 4. Participation in reorganization efforts;
 - 5. Participation in the formation of staffing plans; and
 - 6. Status of pending grievances, unfair labor practices and other litigation issues.
- D. The Parties may determine the need for, and identify, appropriate training. Some types of training that may be appropriate include Alternate Dispute Resolution (ADR), work process improvement, group dynamics, and relationship by objectives.
- E. Where the Parties establish a joint labor management committee (forum) under this Article, Union representatives will be on official time. This official time will not be counted against any allocated official time as described in this agreement.
- F. In instances where sub-committees are established by this joint labor management committee, and the Parties have determined that Subject Matter Experts (SME) is required, the Union will notify the Agency of the appointment of the SME for which duty time would be appropriate.
- G. Activities will be conducted during the normal duty hours of the participants.
- H. When activities are conducted under this Article, the Agency will bear the travel and per diem expenses of Union members involved in that activity to the extent permitted under the Federal Travel Regulations.

Section IV. Communication

- A. The Parties agree to communicate openly.
- B. The Agency agrees to share information at all points along the decision-making process.
- C. The Parties agree at the national and local level senior Agency management (DRA and/or MSD Director) and AFGE officers (AFGE Executive Board) will meet at a minimum biweekly to ensure open lines of communication in the day-to-day activities. The mechanics and procedures for such meetings will be decided by the representatives.

Section V. Pre-Decisional Involvement (PDI)

The Agency will engage the Union in PDI discussions allowing for a minimum of sixty (60) days of discussion. Such PDI discussion topics include but are not limited to the following:

- A. changes in working conditions and conditions of employment;
- B. numbers, types and grades of positions;
- C. methods, means and technology for performance of duties;
- D. personnel policies and practices;
- E. the interpretation and application of rules and policies;
- F. development of Agency policies;
- G. reorganizations
- H. pilot programs;
- I. office relocations; and
- J. Agency hiring practices.

The Agency will not implement any new programs, policies or changes until:

- A. PDI discussions conclude and are memorialized through an MOU;
- B. the Agency provides the Union "Official Notice", opportunity to bargain and bargaining is complete; or
- C. sixty days have passed without mutual extension of the time period for PDI.

PDI discussions do not waive the Agency's obligation to provide "Official Notice" to the Union. Such official notice will be provided through email to the authorized AFGE representative with the subject line including the phrase "Official Notice". The Union retains the right to demand to bargain once "Official Notice" is received in writing from the Agency regardless of PDI discussions.

Section VI. Reasonable Accommodations

The Agency agrees to provide for reasonable accommodation(s), as required in the Reasonable Accommodations Article, to qualified employees with a disability who participate in labor management relations activities, either as employees or Union representatives.

Medical Examinations

Section I.

In directing employees to undergo medical examinations, the Agency agrees to follow 5 C.F.R. Part 339, Medical Qualification Determinations.

Section II.

All records pertaining to the employee's examination and, as applicable, any subsequent personal information included with an application for disability retirement are confidential and may be disclosed only to those with an administrative need to know or as specifically authorized by the subject employee in writing.

Merit Promotion

Section I. Purpose

- A. This Article shall be interpreted and applied in a manner consistent with the provisions of the most recent EPA Merit Promotion Policy Circular 3115, as well as with law, rule, and regulations. During the life of the Agreement, either Party may propose changes to the underlying Circular. The Parties agree such proposed changes will be negotiated to the fullest extent permitted by law. Where the proposed change is inconsistent with, or in conflict with the terms of this Article, such change will only be subject to negotiation if mutually agreed to by the Parties. All procedures and regulations contained in the Agency's Merit Promotion Circular which are not covered in this Article will apply to the extent they are not inconsistent with this Article.
- B. The Parties agree that all promotions to bargaining unit positions are to be made on a merit basis by means of the systematic and equitable procedures as contained in this Article.
- C. Merit promotion is one means of filling vacancies. In the exercise of this responsibility, and through the assessment of the organization's needs, managers may elect to fill vacancies by recruitment alternatives other than merit promotion. Such alternatives include obtaining eligible candidates via reassignment; change to lower grade; transfers from other agencies; reinstatement; OPM registers; EPA delegated examining registers; student appointments, appointment of persons with disabilities, veterans readjustment appointments, disabled veterans who have compensable service connected disability of 30% or more, and other excepted service appointments as appropriate; employees granted priority consideration for placement; and re-employment priority list registrants, etc. When fully qualified candidates for a position can be found via other means of recruitment, these methods may be used in lieu of or in addition to the merit promotion process. \

Section II. Coverage. This Program applies to all EPA organizations and covers all competitive service bargaining unit positions in grades GS-1 through GS-15.

- A. When Competition is Required. Competition is required for the following actions:
 - 1. Promotion or transfer to a higher grade;
 - 2. Temporary promotion for more than 120 days, except as provided below
 - 3. Selection for detail for more than 120 days to a higher-graded-position or to a position with known promotion potential;
 - 4. Selection for training which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion;
 - 5. Reassignment, demotion, reinstatement or transfer to a position with more promotion potential than a position the employee previously held on a permanent basis in the competitive service (except when a reassignment or demotion is made to place an employee affected by a RIF or in lieu of disability retirement); and

[PAGE]

6. Reinstatement to a permanent or temporary position at a higher grade than any grade held in a permanent position in the competitive service.
- B. When Competition is Not Required. Competition is not required for:
1. Career Ladder Promotions. Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e., the position has a documented career ladder and promotion potential). These promotions may be made noncompetitively for any employee who entered the career ladder by:
 - a. Competitive promotion procedures;
 - b. Competitive appointment from a certificate of eligibles (through OPM or delegated examining authority); or
 - c. Non-competitive appointment under a special authority, e.g., conversion of a Student Career Experience Program student or Federal Career Intern, appointment of former ACTION Volunteers or Peace Corps personnel (must clear ICTAP through an announcement), conversion of a Veterans Readjustment Act (VRA) appointee and Presidential Management Intern.
 2. Promotion Based on Reclassification When:
 - a. No significant change occurs in the duties or responsibilities and the position is upgraded due to issuance of a new classification standard, an updated Agency-wide classification policy or the correction of a classification error; or
 - b. The position is upgraded due to accretion of additional duties and responsibilities and all of the following provisions are met:
 - i. The employee continues to perform the same basic functions in the same organization, working for the same supervisor (the duties of the former position are administratively absorbed into the new position, and the former position is abolished);
 - ii. The new position has no promotion potential;
 - iii. The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact the grade-controlling duties and responsibilities of other positions in the unit; and
 - iv. The accretion is supported by a written analysis of the position (which may involve an audit with the employee and/or employee's supervisor, or other fact-gathering method).
 3. Permanent Promotion to a position held under a temporary promotion when:
 - i. The assignment was originally made under competitive procedures; and
 - ii. It was known to all competitors at the time that the assignment may lead to a permanent promotion.
 4. Temporary Promotion of an employee for less than 120 days, or for more than 120 days to a grade level held previously on a permanent basis in the competitive service.
 5. Placement as the Result of Priority Consideration when the referral is a remedy for candidates not given proper consideration in a competitive promotion action;

6. Reduction in Force Placements which result in an employee receiving a position with higher promotion potential;
7. Promotion to a Grade Previously Held on a permanent basis in the competitive service, from which an employee was separated or demoted for other than performance or conduct reasons.
8. Promotion, Reassignment, Demotion, Transfer, Reinstatement, or Detail to a Position Having No Greater Promotion Potential than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.
9. Promotion Resulting From Successful Completion of a Training Program for which the employee was competitively selected;
10. Selection from the Re-employment Priority List at the same or lower grade level than the position from which selected;
11. Reinstatement to any Position of a career or career-conditional employee who served under a career SES appointment consistent with 5 CFR 335.103(c)(3).
12. Promotion as a Legal Remedy as ordered or agreed upon in a legal or administrative proceeding.
13. Details for one hundred and twenty (120) days or less to a higher-grade position or to a position with known promotion potential.

C. Area of Consideration (AOC)

1. Since the AOC targets the group of candidates who will be considered for competitive selection, it is important that it be sufficiently broad to uphold the basic merit principles of open competition, equal employment opportunity and identification of best qualified candidates. The AOC is not intended to limit competition. When establishing the AOC, Human Resource Offices (HRO) should consider any appropriate sources which are likely to help the Agency meet its mission and EEO objectives and contribute fresh ideas and new viewpoints to the organization.
2. The minimum AOC will be an organizational unit, no less than a division, which is considered sufficient to attract more than one qualified candidate for promotional consideration. The local appointing authority has the option of establishing an AOC larger than the minimum prescribed above, especially if experience shows that those minimum areas fail to provide enough qualified candidates
3. An AOC will be established for each vacancy;
4. OPM will be notified of vacancies in the competitive service for which the Agency will consider applicants from outside the Agency in accordance with 5 USC 3327.

D. Time Limits for Posting Vacancy Announcements

1. The Agency will post a vacancy announcement to cover all vacancies that must be filled in accordance with the procedures of this Article. The announcement will be

posted on USAJOBS and the Agency's Intranet for a minimum of fifteen (15) days.

2. Applications submitted electronically on or before the closing date will be accepted.
 3. As a minimum, the vacancy announcement will contain the same type of information as contained in the OPM announcement template, for example:
 - a. Title, series and grade(s) of the vacancy announcement and announcement number;
 - b. Geographic and organizational locations;
 - c. Summary statement of the principal work assignments;
 - d. Minimum OPM qualification requirements plus any mandatory (selective placement) factors;
 - e. Knowledge, skills and abilities and/or competencies and/or task statements required;
 - f. Who to contact for additional information;
 - g. Where and/or how applications should be sent and what they should include;
 - h. Opening and closing dates;
 - i. If the vacancy has known promotion potential or is a career ladder position;
 - j. A statement of EEO;
 - k. evaluation methods to be used;
 - l. special job requirements such as travel or mobility;
 - m. Student Loan Repayment eligibility;
 - n. Area of consideration;
 - o. whether the position is eligible for remote work, telework and/or an alternative work schedule; and,
 - p. Number of positions expected to be filled at the time if more than one.
- E. Methods of Locating Candidates. Candidates may be located using a wide range of methods which may vary with each vacancy depending upon the AOC, the type of position, and similar considerations. All Merit Promotion announcements (or subsequent cancellations) under this article will be posted at a minimum on USAJOBS and the Agency Intranet. These methods include:
1. Vacancy Listings - A brief summary of multiple positions open to competition under the merit promotion procedures.
 2. Individual Vacancy Announcements - Posted notices that advertise one or more positions open to competition under the merit promotion procedures. They will contain the same type of information as found in the OPM announcement template. Individual vacancy announcements will be open for a minimum of 15 calendar days.
 3. Open Continuous Announcements - Posted notices through which applications may be accepted and referred to selecting officials on a continuing basis. They may be used when there is a continuous need for candidates in a particular

occupation or group of occupations. They will contain the same type of information as found in the OPM template.

- F. Priority Consideration -The referral of individuals who by law, regulation, settlement agreement or final decision in a grievance or discrimination complaint must be considered before other candidates. Management must show that the employee received priority consideration for placement. Types of priority consideration include:
1. Repromotion Consideration Eligibles. Employees demoted in the Agency without personal cause and on grade/pay retention are entitled to priority consideration for any vacancies for which they qualify in their local commuting area. Repromotion eligibles are entitled to priority consideration for 2 years unless they are repromoted to their former grade or decline a position of equal grade, whichever occurs first. Candidates may receive consideration only at the grade level in which consideration was lost and having no higher promotion potential than the position previously held.
 2. Candidates Who Did Not Receive Proper Consideration In A Previous Merit Promotion Action Due To A Procedural, Regulatory Or Program Violation. These candidates will receive priority consideration for the next appropriate vacancy in the geographic location where proper consideration was denied. The following conditions must be met before priority consideration under this provision may be granted:
 - a. It is a similar type position in the same pay system as the position for which the employee failed to receive proper consideration;
 - b. The employee is qualified for and would have been in the best qualified group; and
 - c. The vacancy is at the same grade level with no higher potential than the position for which consideration was lost.
 3. Employees Who Receive Priority Consideration Based on An EEO Complaint. These employees must be given priority consideration if it is either the agreed upon resolution to settle the complaint or the remedial action ordered in the final decision of a discrimination complaint.
 4. Displaced Applicants. The Agency will provide special selection priority to eligible displaced applicants who are determined to be well-qualified, in accordance with the regulatory requirements (e.g., under the Career Transition Assistance Plan or the Interagency Career Assistance Program).

Section III. Application Procedures.

- A. Unless otherwise specified in individual vacancy announcements or vacancy listings, interested persons must submit either a resume, curriculum vitae, the Optional Form for Federal Employment (OF 612), or any other written format to describe job-related qualifications and the necessary answers required by the questions provided in the vacancy announcement. A copy of the most recent performance appraisal may be required. The questions contained will be developed through the HR Office with input from the selecting official and/or SME. The questions contained within will be based on the knowledge, skills, and abilities required for the position. It is understood that vacancy

[PAGE]

questions and any relevant weighting factors will be developed and identified prior to announcing the vacancy. No matter what format is used, the application must contain all of the information required in the vacancy announcement/listing.

B. Accepting Applications.

1. When the HR Office Uses a Manual Recruitment System. Generally, the manual system will be used in such situations as identification of systematic problems with USAJOBS. Unless otherwise specified, applications will be accepted from all promotion-eligible candidates whose applications are received in the servicing HRO or postmarked by the closing date.
2. Applications from noncompetitive eligibles, qualified persons with disabilities, 30% or more compensable disabled veterans, VRA eligibles, and Public Health Service officers may be accepted up until the time that the certificate of eligibles is sent to the selecting official. Employees within the AOC who are absent for legitimate reasons, such as approved leave, official travel, detail, Intergovernmental Personnel Act assignment, training or military service, may furnish copies of their application to other employees or their supervisor and request in writing that they be submitted for vacancies. Applications from outside the AOC will not be accepted.
3. When the HR Office Uses an Automated Staffing System. Unless otherwise specified, applications must be submitted to USAJOBS by all candidates by the closing date and time specified in the vacancy announcement. For assistance in applying for a vacancy, applicants may contact the human resources representative listed on the vacancy announcement who will assist applicants to submit their applications online by the closing date of the vacancy announcement. If applying online poses a hardship, applicants must call the human resources representative before the closing date of the announcement to request assistance. In addition, applicants who have a hardship must respond to the same questions as applicants applying online and submit a signed copy of their responses to be received by the servicing HRO prior to the closing date of the vacancy announcement. The HRO will input the data into the system on the applicant's behalf for the specific job for which the applicant is applying only. An example of hardship would be where an applicant lives in or is temporarily assigned to a remote location where it would pose a hardship for the employee to get to a computer and/or access the automated staffing system.

Section IV. Eligibility Requirements.

- A. General. Applicants must meet OPM qualification requirements and any selective placement factors by the closing date of the announcement. Selective placement (mandatory) factors are knowledge, skills and abilities or competencies not contained in the OPM Operating Guide for General Schedule positions that are so essential for successful performance in a particular position that they become part of the qualification requirements in addition to those outlined in the Operating Manual or the Introduction to the Federal Wage System Job Grading System. Selective placement factors are determined by appropriate management officials and are readily identifiable from the

[PAGE]

position description or vacancy announcement. A copy of any selective placement factors will be retained in the merit promotion file. However, certain legal and regulatory requirements (i.e., time-in-grade requirements, time-after-competitive appointment, etc.) must be met within 30 days of the closing date of the vacancy announcement. Applicants responding to open continuous announcements must meet the eligibility requirements at the time the application is submitted to the HRO.

B. Minimum Qualification Requirements. Minimum qualification requirements will be those described or approved by OPM for the particular position involved, plus any mandatory (selective placement) factors. Qualification requirements are found in the OPM Operating Manual for Qualification Standards for GS positions.

C. Distinguishing Between Candidates. Candidates who meet eligibility requirements will be divided into two categories:

1. Promotion Eligibles - those applicants who must compete in order to be placed in the position (applicants in the promotion eligible category will be evaluated in accordance with the provisions below); and
2. Noncompetitive Eligibles - those applicants with or without competitive status who are eligible for reinstatement, reassignment, change to lower grade, special appointing authority (e.g., persons with disabilities, disabled veterans, etc.) or other action where competition is not required for placement in the position. Noncompetitive eligibles will be referred alphabetically without being rated and ranked. Such referrals may be made up until the time that the certificate of eligibles is sent to the selecting official.

D. Evaluation of Candidates

1. Applications may be evaluated by an SME, a rating panel or a human resources representative. Regardless of the evaluator, ratings must be based solely on the application material submitted by the applicant. If an automated staffing system is used to qualify, rate and/or rank applicants, then an HR representative will conduct a quality review before the rating is finalized. When a quality review is conducted for an automated rating, an adjustment will only be made in the event that an applicant's answer(s) to the automated question(s) are not consistent with the applicant's resume or other documentation provided in the promotion package.
2. All candidates who meet the minimum (basic) qualification requirements must be evaluated on job-related criteria (i.e., work experience, education and training) and the selecting official or interview panel will consider applicant awards and appraisals in the selection process, if they are required by the vacancy announcement.
3. Evaluation methods must include an analysis of the job to determine pertinent knowledge, skills and abilities (KSA's) or competencies that are important for successful job performance. Based on the job analysis, the KSA's/competencies to be used as Mandatory KSA's/competencies and rating factors for the vacancy

announcement will be identified and weighted. In an automated staffing system, the identified KSA's/competencies will be elicited in the form of questions or requests for information that the applicant must answer.

4. A rating plan must be developed by the subject matter expert or human resources representative. Only the criteria and established point values given in the rating plan for the vacant position will be applied in this process. The automated staffing system or promotion panel/ranking official will provide an objective assessment of each applicant's potential to perform in the vacant position.
5. All candidates meeting the minimum qualifications for the position will be rated and ranked, regardless of the number of applicants.
6. Anyone present during the panel/ranking official's deliberations is prohibited from divulging to any unauthorized person, including the selecting official, any of the following: contents of rating and ranking worksheets, deliberations, and the numerical scores assigned to candidates until the selection is made. Under no circumstances will such matters be discussed with someone without a need to know.

E. Ranking and Referral of Candidates.

1. Determining Best-Qualified. Promotion eligible candidates will be rated against the KSA's/competencies set forth in the rating plan. Candidates will be identified as either "best-qualified" or "qualified" based on the scores received in the evaluation process. When more than 7 candidates are rated as eligible, best-qualified candidates will be determined by using all the rating factors listed in the vacancy announcements in the evaluation process. Candidates will be ranked according to their rating scores assigned by the automatic staffing system or promotion panel/ranking official.
2. Referral When There Are More Than Ten Qualified Competitive Candidates. The Best Qualified threshold score will be set prior to the close of the vacancy. The Union will be notified if this number changes. The Best Qualified candidates who will be referred for consideration will be determined based on the most logical (natural) break in scores, i.e., two or more points. However, in the event the natural break method results in more than 9 Best Qualified candidates, then the HRO will resort to identifying only the top 7 numerically ranked candidates who will then be forwarded to the selecting official/panel in alphabetical order. All tied scores will be forwarded to the selecting official. Candidates will be ranked according to the rating score assigned by the automated staffing system or panel/SME and referred in alphabetical order.
3. If a best qualified certificate is to be used for more than one vacancy, an additional best-qualified candidate (if available) may be added for each additional vacancy.
4. If there are fewer than 7 best-qualified candidates, only the best-qualified candidates will be referred.
5. If there are no best-qualified candidates and the selecting official, with the concurrence of the human resources representative, determines that it is impractical to expand the AOC, then the qualified candidates may be referred in

alphabetical order. If the HR representative makes such a decision, the reason(s) why the further expansion of the AOC is impractical must be fully documented in writing and included in the Merit Promotion case file.

6. Duration of Merit Promotion Certificate. Normally, certificates are issued with a 60 calendar day time limit. In extenuating circumstances, certificates may be extended for an additional 60 days with a written request from the selecting official to the servicing HRO. A copy of the written request for extension will be sent to the union.
7. Use of Certificates for Additional Positions. Certificates may be used to fill additional vacancies for similar positions up to 120 days. A similar position is one that is located in the same division or office, has the same title, series and grade (and promotion potential, if applicable,) and requires the same KSA's or competencies.
8. When ranking candidates for vacancies at multiple grades, each candidate will be ranked separately by each grade for which the candidate applied.
9. In those cases where the Agency finds that the nature of the job requires more direct involvement of subject matter experts (SMEs) in rating the applicants, one or more SMEs will be utilized to help to evaluate the candidates. The Agency will redact the name and other identifying information from the application prior to submitting to an SME. The Union will be informed of the use of SMEs prior to the vacancy posting.
10. Responses by candidates to the questionnaire may be verified with information contained in the applicant's resume and the applicant's submitted documentation by one or more subject matter experts (SMEs).
11. The assessment of each candidate by SMEs will be based solely on the documentation before the SMEs and not on the personal knowledge or opinion of the SMEs.
12. The SMEs will be of the same or higher grade than the position to be filled.

F. Interviews and Selections

1. Interviews may be conducted at the discretion of the selecting official or interview panel, subject to the following; if one EPA internal candidate is interviewed from the best qualified list, all EPA bargaining unit employee candidates will be given the opportunity to be interviewed.

G. Release and Notification of Applicants. The human resources representative will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an employee will be released no later than one complete pay period for promotion, following the selection. When local workforce and program conditions permit, an employee will be released no later than two complete pay periods for reassignments, following the selection. *When an employee is nearing the end of a within-grade increase waiting period, consideration should be given to releasing an employee at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the employee.* All applicants will be notified of the outcome of announced vacancies. The effective date for a promotion

will be the first day of the pay period in which the selectee assumes the duties of the position for which selected.

H. Disclosure of Information

1. All candidates must have equal access to information on the merit promotion process and procedures.
2. Applicants will be notified of:
 - a. Whether they were found eligible;
 - b. Whether they were referred to the selecting official/grouped on the best qualified list; and
 - c. Who was selected.
3. In addition, applicants may request and receive information concerning:
 - a. Whether the vacancy announcement was canceled;
 - b. Areas, if any, in which they should improve to increase their chance for future promotion; and
 - c. The applicant's own rating assigned in the ranking process, both before and after the quality review if applicable.

I. Employee Concerns. If an employee/Union wishes to raise concerns about an apparent violation of the merit promotion procedures, he/she may file a grievance under the negotiated grievance procedure. For purposes of raising such an allegation, the grievant is to file the first- step grievance with the HR Officer with jurisdiction over the merit promotion case when they have authority to take corrective action.

1. In the processing of grievances related to merit promotion actions taken under the terms of this Article, the employee's representative will, upon request to the appropriate servicing HRO, be furnished the relevant and necessary evaluative material (e.g., the application package, interview notes, quality review results) used in the ranking process and/or by the Selecting Official that is contained in the Merit Promotion file used in the selection action, subject to the following:
 - a. Evaluative material will be confined to the applicants appearing on the Best Qualified List;
 - b. No information will be released that includes identifying information, in order to protect privacy rights;
 - c. If a crediting plan is to be reviewed by a union representative, they will perform the review in the presence of an authorized HRO official. A hard copy of the crediting plan will not be provided. The union representative may not release the contents of that crediting plan to any other Agency employee;

J. The Agency agrees that selective placement factors will only be used when they are essential to the successful performance of the position. In such cases, they will constitute a part of the minimum requirements of the position. Selective placement factors will be made clear to applicants in the vacancy announcement. They will also be submitted to the union prior to the position listing.

- K. An employee who is the subject of an investigation for misconduct will not be denied or have a promotion delayed.
- L. An employee's accumulation or balance of annual or sick leave may not be considered by ranking officials and/or selection officials as a basis for selection or non-selection. However, this does not preclude the consideration of leave balances if there is abuse of leave or resultant effect on the employee's dependability or work performance.
- M. Employees are entitled to retroactive pay in connection with improper personnel actions in accordance with laws and regulations.
- N. If, as a result of a grievance being filed under this Agreement, either the Agency agrees or an arbitrator decides that an employee was not awarded proper consideration in a previous competitive action, but retroactive promotion is not warranted, then corrective action will be taken in accordance with the following principles.
1. If the employee was erroneously omitted from the best qualified list, he or she will receive priority consideration for the next appropriate vacancy for which he or she is qualified. An appropriate vacancy is one which has the same promotion opportunities as the position for which the employee received improper consideration. Priority consideration involves, in addition to the above, the submission of the employee's name along with his or her application and performance appraisal alone on a certificate to the selecting official before the selecting official reviews the qualifications of all other competitive applicants.
 2. If an employee was among the best qualified candidates and if the performance appraisal reviewed by the selecting official is subsequently increased as a result of a grievance having been filed, then the employee shall receive priority consideration for the next appropriate vacancy.
 3. In the event that two (2) or more employees are entitled to priority consideration for the same vacancy, the name of all such employees shall be submitted on a Certificate of Eligibles for Reconsideration or Re-promotion to the selecting official in alphabetical order. The employees' applications and performance appraisals will be included with the certificate.
 4. However, if a priority consideration candidate is non-selected, the Agency shall prepare a written narrative statement listing the reasons for non-selection. Employees will be informed in writing that the documented reasons are contained in the Agency's merit promotion file and that a copy of this documentation shall be provided to the employee
- N. Upon completion of the selection process, a copy of the completed Selection Report shall be sent to the union president. At a minimum, that report shall contain the following information:
1. Announcement number;
 2. Date of report;

3. Number of vacancies expected to be filled and number of vacancies that were filled;
4. Number of candidates referred;
5. Selection action (i.e., a clear indication of which candidate(s) were selected); and
6. Date of the selection action.

Section V. Within Grade Increases

- A. Criteria for Granting a Within-Grade Increase. An employee will be granted a within-grade increase when they have completed the required waiting period and the employee has performed at an acceptable level of competence during the waiting period as follows:
 1. One year to move to steps 2, 3, and 4;
 2. Two years to move to steps 5, 6, and 7;
 3. Three years to move to steps 8, 9, and 10;
- B. Supervisors are responsible for keeping employees informed of the acceptability of their work on a regular basis. Supervisor will submit the necessary paperwork to the SSC for processing within grade increases as soon as possible but not later than one (1) pay period of the anniversary of time in grade. If there is a delay of more than one (1) pay period in processing at the SSC, the employee will be entitled to retroactive pay.
- C. An employee is regarded as having reached an acceptable level of competence when the employee's demonstrated work performance in all critical elements meets or exceeds standards established at the "Effective" level or its equivalent, and when the employee's rating of record is "Effective" or its equivalent or higher.
- D. Where employees have been assigned to their present supervisor for less than ninety (90) days, and the supervisor cannot adequately assess the employee's performance, the supervisor shall secure the views of the employee's previous supervisor, when available, before making a determination. If the supervisor of record is no longer employed by EPA, the Agency shall advance the within-step increase.
- E. Denial of Within-Grade Increase. Consistent with the PARs Article, the supervisor will give ample warning, normally not less than thirty (30) calendar days prior to the within-grade increase due date, to an employee whose performance does not or may not meet the acceptable level of competence requirement.
 1. The supervisor will advise the employee of their deficiencies in performance and tell the employee that they may not be certified as meeting the acceptable level of competence requirement.
 2. The supervisor will record the date and substance of this notification and provide a copy to the employee, which at a minimum shall include:

- a. those critical aspects of the employee's performance in which the employee is deficient and the extent of the deficiency;
 - b. any instances, specifically described, which support the alleged deficiencies of performance; and
 - c. assistance which will be offered so as to enable the employee to improve their performance so as to meet the requirements specified for the position.
 3. Employees who have been informed that they may not be given a within grade step increase, will have performance elements established to achieve the within grade increase. A determination shall then be made upon completion of the minimum appraisal period of 90 days. In certain circumstances, the supervisor may postpone the acceptable level of competence determination, e.g., the employee did not receive performance standards at least ninety (90) days before the end of the waiting period and he or she is not performing at an acceptable level of competence.
 4. Written notification to the employee of a determination to withhold a within-grade increase will be given as soon as possible after completion of the waiting period. Such notification shall:
 - a. Set forth the reasons for the negative determination.
 - b. Set forth the manner in which the employee must improve his/her performance in order to be granted a within-grade increase, and
 - c. Notify the employee of his or her right to request reconsideration of the negative determination and file a written response within fifteen (15) calendar days of receipt of the notice pursuant to this Article.
 5. When an employee receives a negative determination, he or she shall be granted a reasonable amount of duty time to review the material relied upon to make the determination.
 6. If a negative determination is reversed by the Agency (either before or upon reconsideration), the effective date of the increase will be the original due date and the employee will receive retroactive pay.
- F. Appeal of Denial of Within-Grade Increase. An employee may request reconsideration of a denial of a within-grade increase by filing, with their supervisor, not more than 15 calendar days after receiving notice of determination, a written response to the denial. This request for reconsideration shall set forth the reasons that the Agency shall reconsider the determination. Upon request, the supervisor will meet with the employee and their representative. If the parties work within the local commuting area, this meeting shall be in person; otherwise, the meeting will be by teleconference unless the Parties mutually agree to a face-to-face meeting.
1. The Agency shall provide the employee with a written decision within 15 workdays of receipt of the request for reconsideration. Where an employee is denied their within-grade increase by the reconsideration official, the letter transmitting the official's decision shall include a statement which informs the employee about their right to appeal the decision through the grievance procedure

and the number of days in which the employee must request such an appeal through the Union.

G. Quality Step Increase (QSI). When the Agency determines that it intends to award a QSI due to rating level, the Agency shall collect all eligible employees whose rating of record is “distinguished” or the equivalent.

1. The Agency shall inform all employees having reached “distinguished” or the equivalent that they are eligible for a within grade increase due to rating level.
2. If more than one employee has reached “distinguished” or the equivalent rating level to qualify for a within grade increase due to rating level and there is a limited number of within grade increases that can be awarded, the employee(s) who do not receive the QSI will receive a written explanation as to why they did not receive a QSI.
3. The Agency shall articulate the standards by which it will decide who is awarded the QSI and inform the employees competing for such increase.
4. The Agency will not consider cost differential when it determines the QSI recipient.

Supplemental Agreements and Midterm Bargaining

Section I: Midterm Bargaining

The Parties agree that there are circumstances when negotiations are appropriate during the life and term of this Agreement. At the Union's election, when the Agency, at any level, proposes a change in the substance of an otherwise negotiable personnel policy, practice, working condition, condition of employment, exercises a management right.

- A. The Agency will provide "Official Notice" in writing to the Union at least ten (10) working days before the proposed change or management decision and its impact. The Agency will notify the Union of the proposed date of implementation.
- B. The Agency will not implement any proposed change or management decision until the Agency provides the Union "Official Notice", opportunity to bargain and bargaining is complete. "Official Notice" will be provided through email to the authorized AFGE representative with the subject line including the phrase "Official Notice".
- C. The Union will have 10 workdays from receipt of "Official Notice" to request a briefing. Upon request, the Agency will provide the Union a briefing to explain the proposed change or the management decision and its impact. The Agency will provide such briefing within 5 workdays
- D. If the Union does not request a briefing, a demand to bargain will be due within 15 workdays from the date of "Official Notice". If a briefing is requested, the Union's demand to bargain will be due within 15 workdays from the briefing date.
- E. The Union will provide written proposals to the Agency within 15 workdays of the Union's demand to bargain.
- F. Within fifteen (15) working days of receipt of the Union's proposal, the Agency will provide a counter proposal.
- G. If deemed necessary by either party, engaging in midterm bargaining, the Parties will negotiate ground rules for bargaining of issues arising from the operation of this Article at the national level.
- H. The Duration for any supplemental agreements will be for the same duration as this MCBA Duration Article.

Section II. Reopening this Agreement

The Parties agree that there are circumstances under which reopening this Agreement is beneficial. Reopening of this MCBA is covered in the Duration Article of this Agreement.

Section III. Local Bargaining

The Parties agree that there are circumstances under which local bargaining is appropriate.

- A. The Agency will provide "Official Notice" in writing to the Local Union at least ten (10) working days before the proposed change or management decision and its impact. The Agency will notify the Local Union of the proposed date of implementation.
- B. The Agency will not implement any proposed change or management decision until the Agency provides the Local Union "Official Notice", opportunity to bargain and bargaining is complete. "Official Notice" will be provided through email to the authorized AFGE Local representative with the subject line including the phrase "Official Notice".
- C. The Local Union will have 10 workdays to request a briefing. Upon request, the Agency will provide the Local Union a briefing to explain the proposed change or the management decision and its impact. The Agency will provide such briefing within 5 workdays
- D. If the Local Union does not request a briefing, a demand to bargain will be due 15 workdays from the date of "Official Notice". If a briefing is requested, the Local Union's demand to bargain will be due within 15 work days from the briefing date.
- E. The Local Union will provide written proposals to the Agency within 15 workdays of the Local Union's demand to bargain.
- F. Within fifteen (15) working days of receipt of the Local Union's proposal, the Agency will provide a counter proposal.
- G. If deemed necessary by either party engaging in midterm bargaining, the Parties will negotiate ground rules for bargaining of issues arising from the operation of this Article at the local level.
- H. The Duration for any Local Agreement or MOU will be for the same duration as this MCBA Duration Article.

Section IV: Authorized Representatives

The Parties agree to recognize each other's duly authorized representatives. Generally, for the Union, the representative for national matters is the Council President (or designee) while local matters the Local President (or designee). Generally, for the Agency, the representative for national matters is the Director (or designee), LER while local matters is the Director (or designee), MSD. All dealings between the Parties will take place between the appropriate authorized representatives unless an authorized representative designates another individual to act in their place. Each authorized representative for the Parties will be authorized to enter into binding agreements for the Parties.

Understandings reached by unauthorized individuals will have no force and effect unless approved by the authorized representative of the Parties. The Parties will advise each other of their respective authorized representatives at the local levels at least annually. The Parties will notify each other of their authorized local and national level representative in writing and such authorization will remain in effect until revoked.

Section V: Mandatory and Permissive Subjects

Consistent with President Biden's Executive Order 14003, "Protecting the Federal Workforce," the Agency will bargain permissive subjects, in addition to negotiating mandatory subjects. The Agency will negotiate on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

Section VI. Travel for Midterm Bargaining

Where a Union representative's travel would be in the primary interest of the Agency, the payment of those travel expenses will be provided by the Agency. The Parties will make every effort to negotiate virtually to save time and travel costs.

Section VII. Effect of Provisions on Conditions of Employment

Existing conditions of employment (e.g., past practices) not in conflict with law or provision of this agreement will remain in effect.

Section VIII. Official Time and Bargaining Team Members

The Parties agree preparation, research, negotiations and bargaining are appropriate uses of official time. The Parties further agree the use of subject matter experts (SME) is beneficial for negotiations and such SMEs will do so on duty status.

Each Party agrees to unlimited observers in a virtual setting and a capacity limit for in person negotiations based on room capacity limits, but no less than a total of 25 persons. The Agency agrees observing negotiations is suitable for duty status.

Miscellaneous Facilities

Section I. Bicycles and Parking

Provisions for vehicle and bicycle parking are matters for local level negotiations subject to applicable laws and regulations. Employees shall follow the health and safety procedures as provided or directed by the Agency necessary for their protection.

Section II. Lactation Space

A. The Agency shall provide lactation space that is:

- a. private space separate from a bathroom and lockable;
- b. safe and secure;
- c. amply lit;
- d. accessible to all;
- e. equipped with a refrigerator, microwave, and sink; and
- f. equipped with signs providing contact information for maintenance, supplies, or accessibility issues (including wifi).

Employees shall follow the health and safety procedures as provided or directed by the Agency necessary for their protection. At a minimum, the Agency will provide one (1) lactation space at all EPA locations. For every 250 employees, the Agency shall provide an additional lactation space to ensure ample facilities are available. Additional provisions are a matter for local level negotiations subject to applicable laws and regulations.

Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 6/3/2022 9:34:59 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Howell, Joyce [Howell.Joyce@epa.gov]; Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: AFGE MCBA Proposals (3 of 3)
Attachments: AFGE NGP 06032022.docx; AFGE Overtime 006032022.docx; AFGE PARS 06032022.docx; AFGE PDs and Classification 06032022.docx; AFGE Preamble 06032022.docx; AFGE Reasonable Accommodations 06032022.docx; AFGE Reassignments and Reorganizations 06032022.docx; AFGE Scientific Integrity 06032022.docx; AFGE Selective Placement Programs 06032022.docx; AFGE Union Rights 06032022.docx; AFGE Reasonable Accommodations 06032022.docx

Marie Owens Powell

President

AFGE Council 238

PHONE: 215-814-3384

<https://www.afge.org/>

<http://www.joinafge.org/>



Negotiated Grievance Procedure

Section I. Purpose

- A. The Parties will ensure that their representatives are properly authorized to resolve matters raised under this Article. The Parties agree that the expeditious resolution of grievances is in the public interest. Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability. Furthermore, engaging in the grievance process, whether formally or informally, is a protected activity.
- B. The purpose of this Article is to provide an orderly method for the disposition and processing of grievances brought by employees, or by the Union on behalf of employees.
- C. The Parties are encouraged to seek informal resolution of grievances. Accordingly, such matters may be brought to the attention of the employee's supervisor for informal resolution, before filing a formal grievance. In the event a formal grievance is filed, the Parties will endeavor to resolve the grievance at the lowest level in the grievance process.
- D. On a semi-annual basis, the Agency will provide a report to Council 238 with the number of grievances filed for each time period. The report will show the number of grievances filed by Local, the general nature of the grievances, the number settled or withdrawn at each step of the process, and the number of arbitrations.

Section II: General

- A. The grievance procedures of this Article shall not apply to the following:
 - 1. any claimed violation of the Hatch Act (relating to prohibited political activities);
 - 2. retirement, life insurance or health insurance;
 - 3. a suspension or removal under Section 7532 of Title 5 (relating to national security matters);
 - 4. any appointment to a position at the Agency;
 - 5. the classification of any position that does not result in the reduction in grade of the employee;
 - 6. matters already filed with the Merit Systems Protection Board (MSPB) as an adverse action which are, therefore, statutorily precluded from duplicate filing under this procedure;
 - 7. matters over which an employee has filed a written formal complaint of discrimination through the formal EEO complaint process; or
 - 8. the separation of a probationary employee, except when the employee is separated in violation of law.
- B. This procedure will be the only administrative procedure available to employees for the processing and disposition of grievances as defined above, except when the employee has a statutory right of choice under 5 USC § 7121, including adverse actions, actions taken

for unacceptable performance, or EEO complaints. This subsection will be applied consistent with 5 USC § 7121.

- C. Union representatives under this procedure may use official time to represent employees consistent with law and regulation.
- D. Employees who believe they have been illegally discriminated against on the basis of race, color, religion, sex, national origin, age, or disability have the right to raise the matter under the statutory procedure or the negotiated grievance procedure of this MCBA, but not both. Employees will have elected the forum (eg, grievance or EEO procedure) when either (1) the grievance is filed alleging discrimination or (2) a formal EEO complaint is filed. Information regarding the Agency Equal Employment Opportunity Alternative Dispute Resolution process shall be provided to any employee who contacts an EEO counselor to raise allegations of discrimination.
- E. A grievance may be filed on a matter that also gave rise to complaints filed through other venues (e.g., ULP, EEO, 4711 complaint, etc.) as long as the specific issues and violations in the grievance are covered only in the grievance.
- F. The Parties may agree in writing to waive any step of this procedure.
- G. Time periods set forth in this Article shall be computed from the day after the receipt of a grievance by the Agency and the day after the receipt of a decision by the Union.
- H. The parties may agree to extend the time limits in this Article at any time.
- I. All notifications and service of documents under this Article shall be via electronic mail.
- J. The Union shall be immediately notified by the Agency of all grievances proceeding under this Article where the grievant is not represented by the Union. The Agency shall provide to the Union all documents related to the grievance including but not limited to, the grievance, response documents, etc.
- K. Time limits may be extended by written agreement of the Agency and the Union.

Section III. Grievance Meetings

- A. Grievance meetings will be scheduled at a time agreeable to the Union and the Agency. In the absence of agreement, the meeting will be scheduled during the grievant's normal tour of duty. Under circumstances where the meeting cannot be scheduled during the representative's normal tour of duty the Union representative's tour of duty may be changed to meet these representational needs consistent with this MCBA.
- B. The grievance meetings will be virtual or in person upon mutual agreement. The location of grievance meetings will be mutually determined by the Agency and the Union.

Section IV. Individual Grievances

- A. Grievances under this Article may be initiated by employees, either singly or jointly, or by the Union on behalf of employees. Grieving employees will have the right to be accompanied, represented and advised by the Union at any point in this procedure.
- B. Where an employee has initiated a grievance and does not elect to be represented by the Union, the Union will have a right to be present at all informal and formal discussions between the employee and the Agency concerning the grievance. The Agency will resolve all grievances presented under such circumstances consistent with the terms and conditions of this MCBA. The Union will be provided with a copy of the Agency's response one (1) full workday before it is given to the grieving employee.

Section V. Streamlined Grievances

- A. The Parties acknowledge that certain types of individual grievances must be addressed as quickly as possible, thus the Parties agree to address these grievances according to a Streamlined Grievance and Arbitration procedure. For the complaints identified below, Streamlined Grievances will be processed in accordance with the uniform employee grievance procedure as described in Section 7 of this Article, except that Streamlined Grievances will be initiated at Step 2 of that procedure.
- B. The Streamlined Grievance process will be used to consider grievances concerning:
 - 1. outside employment;
 - 2. hours of work (including AWS, credit hours, religious compensatory time and distribution of overtime);
 - 3. absence and leave (including AWOL);
 - 4. disputes over the approval of official time under this MCBA;
 - 5. issuance of a leave restriction letter;
 - 6. Weingarten rights and formal discussions; and
 - 7. any other matters mutually agreed upon by the Parties.

Section VI. Consolidated Grievances

- A. Consolidated Grievances are those grievances where two (2) or more grieving employees within the jurisdiction of:
 - 1. the Council that have designated the Union to serve as their representative on one (1) or more grievances involving the same facts and the same issues; or
 - 2. the Union has filed one (1) or more grievances on behalf of two (2) or more employees, within the jurisdiction of one (1) Local, involving the same facts and the same issues.

- B. Official time shall be provided to employees seeking to participate in Consolidated Grievances, and the Agency shall pay for travel to the Arbitration for each grievant. In addition, each grievant will be given the opportunity to observe the arbitration proceeding by electronic means.
- C. Grievants outside the commuting area of any meeting may participate virtually, by telephone or other electronic means.
- D. Consolidated Grievances will be processed in accordance with the uniform employee grievance procedure as described below, except that such grievances will be initiated at Step 2 of that procedure.
- E. Consolidated Grievances involving employees who work in one (1) Division or the organizational equivalent will be filed with the appropriate manager in that Division.
- F. Consolidated Grievances involving employees in more than one (1) Division or organizational equivalent will be filed with the Agency level manager in either Division. Consolidated Grievances alleging violations of this MCBA regarding promotions shall be filed with the Agency level manager from the operating unit within the Division that posted the vacancy announcement.
- G. Within ten (10) calendar days of the filing of the grievance, the manager shall issue a written response to the grievance in writing to the grievants.
- H. When responding to a Consolidated Grievance, the Agency will protect employee privacy by placing any details about individual employees that merit privacy, including PII, in responses that are only sent to the individual employees and their representative(s).

Section VII. General Grievance Requirements

- A. Except as provided in other provisions of this MCBA, grievances must be filed with the Agency within thirty (30) days after the incident which gives rise to the grievance or within thirty (30) days after the aggrieved or the Union became aware of the matters out of which the grievance arose, unless an extension is granted.
- B. If the Agency does not provide information sought by the Union under an information request issued for an action that may be taken under this Article in a timely manner, the time limit to file the grievance shall be automatically extended by the number of days the Union awaits that information.
- C. The grievance must provide the following information: grievant's section and division within the Agency, the violation alleged, and the remedy sought. The grievance must be signed and dated by the employee or their representative.

- D. Grievances regarding disputes over any appraisals received by an employee pursuant to the provisions of the PARS Article of this MCBA will be initiated at the second step of the employee grievance process. The second level supervisor or designee who approved the rating of record will serve as the deciding official.
- E. An employee may file a grievance regarding a dispute over an appraisal in accordance with this Article. Employees may file a grievance over their appraisal only upon the issuance of that appraisal, or within thirty (30) days after the employee's appraisal is used in an action. In no case may an employee's appraisal be grieved or arbitrated more than once after its issuance.
- F. For grievances alleging discrimination as described above, the time limits for filing grievances shall be forty-five (45) days. This forty-five (45) day period may be extended if the employee utilizes alternative dispute resolution procedures. Any extension of the filing requirements will be consistent with the procedures outlined in the alternative dispute resolution process utilized by the employee. However, the above procedure will in no way extend the 180-day requirement provided by EEOC regulation.
- G. Multiple grievances over the same issue may be initiated either as individual grievances or as a single Consolidated Grievance at any time during the time limits set forth for such grievances. Such multiple grievances may be combined and decided as a single Consolidated Grievance at any stage where appropriate.

Section VIII. Uniform Employee Grievance Procedure

- A. **Step 1 Grievance.** A Step 1 grievance is required to be presented in writing to the employee's immediate supervisor, or the manager who is responsible for the action grieved. The submission of the grievance constitutes notice that a meeting is requested.
 - 1. Step 1 Grievance Meeting.
 - a. Union representatives may attend Step 1 grievance meetings. The Parties may agree that no meeting be held; also, the grieving party may unilaterally elect not to request a meeting. If held, the meeting shall take place within five (5) workdays of the submission of the grievance. By mutual agreement, the meetings may be held virtually or face-to-face.
 - b. The Step 1 grievance meeting shall include the supervisor or designee, the employee, the employee's Union representative. The meeting is intended to provide an opportunity for the employee to present and discuss aspects of the issues giving rise to their grievance with the supervisor to clarify issues and find an appropriate resolution.
 - 2. Step 1 Grievance Response.
 - a. The Agency shall present to the grievant a written response to the grievance within fifteen (15) days of the close of the meeting, if one is held, or within fifteen (15) days of the filing of the grievance if a meeting is not held. The Agency will give a substantive response to each issue raised in the grievance in the written decision. Such decision shall include

the name of the Step 2 official, which is the next higher-level supervisor. If a timely response is not received and the grievance is not withdrawn, the grievance automatically advances to Step 2.

B. Step 2 Grievance

1. The employee may appeal the grievance to the appropriate next higher level of management (absent formal agreement otherwise) as a Step 2 grievance. A Step 2 grievance must be filed within fifteen (15) days of receipt by the grievant(s) of the decision in Step 1.
2. The Step 2 Grievance constitutes notice that a meeting is requested. However, the Parties may agree that no meeting be held, and the grieving party may unilaterally elect not to request a meeting. If held, the meeting shall take place within ten (10) days of the notice of the Step 2 appeal.
3. The employee, a designated Union representative and the next higher-level supervisor (or designee) will hold a virtual meeting in accordance with above, unless an in-person meeting is mutually agreed upon.
4. Step 2 Grievance Decision - The employee and the Union will be provided with a written decision to the Step 2 grievance within fifteen (15) days of the close of the meeting, if one is held, or within thirty (30) days of the Step 2 grievance filing if a meeting is not held. The Agency will give a substantive response to each issue raised by the grievance(s) in the written decision. The response will also include the email address for the grievant(s) to notify the Agency of an invocation of arbitration consistent with below.

C. Witnesses

1. The Parties acknowledge their obligation to produce witnesses who have information relevant to the matter at issue. Evidence and witnesses that are relevant to the resolution of a grievance may be introduced at any stage of the grievance or arbitration process. The Union's request for the participation of witnesses who are managers or bargaining unit employees of the Agency will be approved, consistent with this MCBA.
2. The Union may request the appearance of witnesses who are employees of the Agency during any step of the grievance process.

D. Information

1. The Parties agree to exchange information that is necessary to understand the dispute and maximize the potential of settling the matter.
2. The Agency will inform the Union within two (2) days whether information requested under 5 USC § 7114(b)(4) will be supplied. The Agency will provide the information to the Union by the date specified in the information request. Where a grievance is involved and the information is not being provided in a timely manner, the Union may either move forward with the grievance or receive an automatic extension of time (as specified above) to file the Step 2 grievance or arbitration process.

- E. Procedural arbitrability issues (e.g., timeliness, failure to adequately state a claim) must be raised by the Agency no later than at the last grievance decision by the Agency.

Section IX. Appeal to Arbitration

- A. If the matter is not resolved following the Step 2 meeting and/or written response, the Step 2 decision may be appealed to binding arbitration as provided in this MCBA.
- B. The Union must notify the Agency of the invocation of arbitration. Such notice must be sent to the Agency's Designated Management Official.
- C. The Union must invoke arbitration within thirty (30) days of the date it receives the final decision issued by the Agency. If a final decision was not timely rendered, the Union may invoke arbitration at any time after the date on which the decision was due and up until thirty (30) days after the decision is eventually provided.

Section X. Institutional Grievance Procedure (formerly Grievance of the Parties)

- A. Purpose - The purpose of this section is to establish an orderly and uniform procedure for the processing and disposition of institutional grievances filed by the Union stemming from application of this Agreement.
- B. Definition - "Institutional grievance" means any complaint by the Union concerning the effect or interpretation, or a claim of breach of the provisions of this MCBA relating to the rights and benefits that accrue to the Union as the exclusive representative of bargaining unit employees. Grievances on behalf of employees, or that relate to the employment of employees, or that concern any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment of employees are not institutional grievances within the meaning of this procedure unless the provisions of subsection 4(A)(2) apply.
- C. Uniform Grievance Procedure for Local/National Institutional Grievances
 - 1. Institutional grievances must be in writing and filed with the Agency within thirty (30) days of the incident that gives rise to the grievance, or within thirty (30) days from the time the Union learned of the matter out of which the grievance arose. However, where the grievance is for failure to invite the Union to a formal meeting, as provided for in 5 USC § 7114 or for alleged violations of 5 USC §§ 7116(a)(2),(3),(5),(6), and/or (7), the time limits for filing grievances shall be 180 days.
 - 2. An Institutional Grievance must provide information concerning the parts of this MCBA that are alleged to have been violated and the remedy sought.
 - 3. If an offer to attempt to resolve an Institutional Grievance through an alternative dispute resolution program is made and accepted, the clock will be stopped with regard to the time limits for processing a grievance on the issue. If mediation fails, processing of a grievance, if any, will be resumed at the point it reached when mediation began.

4. The Institutional Grievance must be filed with the Agency-level manager of the Division in which the grievance arose.
5. Within thirty (30) days of the meeting, the Agency shall issue a written response to the Institutional Grievance.

D. Union-Invoked Arbitration

1. If the matter is not resolved following the meeting and/or written response above, the Union may invoke arbitration in accordance with this Article at any time after the date on which the decision was due and up until thirty (30) days after the decision is eventually provided.
2. Procedural arbitrability issues, such as timeliness and failure to adequately state a claim, must be raised by the Agency no later than the grievance response.

Article XI. Arbitration

A. General

1. When the right to arbitration is invoked, arbitrations will be conducted pursuant to the terms of this Article.
2. There are three (3) arbitration procedures:
 - a. **Conventional arbitration** - used when a matter is not identified as one which is to be arbitrated by means of expedited or streamlined procedures;
 - b. **Expedited arbitration** - used for the following matters (provided that the grievance does not allege discrimination based on race, color, sex, national origin, religion, age, or physical or mental handicap; retaliation for whistleblowing; anti-union animus; or an unfair labor practice; and provided that the dispute does not involve questions of bargaining history):
 - i. suspensions of fourteen (14) days or less;
 - ii. written reprimands;
 - iii. oral admonishments confirmed in writing;
 - iv. dues withholding;
 - v. improper maintenance of personnel records;
 - vi. reassignments/realignments in violation of Reassignment and Reorganization Article of this MCBA;
 - vii. bulletin board postings or electronic communications;
 - viii. literature distribution;
 - ix. performance appraisals, including challenges to the accuracy of the information contained in the underlying performance databases; and
 - x. ranking panel/official evaluations.
 - c. **Streamlined arbitration** - used for the following matters (provided the matter does not allege discrimination based on race, color, sex, national origin, religion, age, or physical or mental handicap; retaliation for

whistleblowing activities; anti-union animus; or an unfair labor practice;
and provided the matter does not involve questions of bargaining history):

- i. absence and leave (including AWOL);
- ii. disputes over the approval of official time under the Union Rights Article of this MCBA;
- iii. hours of work (including AWS, credit hours, religious compensatory time and distribution of overtime);
- iv. outside employment requests;
- v. issuance of a leave restriction letter; and
- vi. any other matters which the Parties mutually agree upon.

B. Initiating Arbitration and Selection of an Arbitrator

1. The Party submitting the grievance to arbitration (initiating party) shall request the Federal Mediation and Conciliation Service (FMCS) provide a list of seven (7) impartial qualified persons to act as arbitrators. The Parties shall meet within fifteen (15) days after receipt by both Parties of the list of Arbitrators. If they cannot mutually agree upon one of the listed arbitrators, the Parties will each strike three (3) names, and the remaining person will be the duly selected arbitrator. The flipping of the coin or other mutually agreeable means will be used to determine which Party will strike the first three (3) names. The initiating Party will pay the FMCS fee. If either Party refuses to participate in the selection of an arbitrator then the other Party may select the arbitrator.
2. Once an arbitrator name is selected, the Parties will sign the FMCS arbitration form letter and mail, fax or email it back to FMCS within ten (10) workdays. If electronic filing is used, the requesting Party shall submit the selection form to FMCS and provide a copy to the other Party. The filing party will ensure that the listed names, emails, addresses and phone numbers of the applicable Union and Management representatives are correct.
3. The hearing under conventional arbitration with the arbitrator will normally be within sixty (60) days of the written notification. To avoid arbitrating "stale" facts, the hearing under all other forms of arbitration will normally be within thirty (30) days of the written notification, dependent upon the arbitrator's availability.
4. Upon selection of an arbitrator, the representatives for the Parties will jointly communicate with the arbitrator and each other to select a mutually agreeable date for the hearing.
5. Any extensions of the time limits in this Article must be mutually agreed upon by the Parties. Any request for an extension(s) must be in writing, specifically identifying which time frame in this Article the requested extension is for and the reason. A denial or agreement from the opposite Party must be in writing. These requests become part of the grievance file.

C. Arbitration Procedures. The following procedures apply to **all arbitrations**:

1. No later than five (5) workdays before the date of the arbitration, to clarify the issues involved in the case, the parties shall exchange their proposed witnesses

and the potential testimony and any exhibits they intend to introduce during the hearing. Exhibits should be deemed joint exhibits if both parties list them. If either party intends to introduce an expert witness report during the hearing, such report must be provided to the opposing party no later than fifteen (15) days in advance of the hearing.

2. **Costs** - The Parties will each pay one-half (1/2) of the arbitrator fees and expenses including travel expenses of the arbitrator hearing a case unless the union grievant substantially prevails as determined by the arbitrator. In such cases, the Agency shall pay seventy-five percent (75%) of the regular fees and expenses including travel expenses of the arbitrator hearing the case. Attorneys fees shall be paid by the Agency as awarded by the arbitrator. Management shall bear any additional costs, including if reasonable accommodations are needed, or if a hearing is scheduled or continued due to reasonable accommodations needed by the parties to the arbitration.
3. **Hearing Location** - Arbitration hearings will be held virtually or on the Agency's premises by mutual agreement at the grievant's official agency worksite or at any site agreed to by the parties. The grievant, the grievant's representative and all employees who are called as witnesses will be excused from duty and shall use official time to participate in the arbitration proceedings without loss of pay or charge to leave. For conventional arbitration, the Agency shall pay travel expenses for any employee witness or representative traveling to the arbitration hearing.
4. **Hearing Location for National Institutional Grievances** - For National Institutional Grievances filed by Council 238, hearing shall be virtual unless the Parties mutually determine an in person meeting is necessary. The location of hearings on a case-by-case basis by mutual agreement. In the event the Parties cannot agree on a location, location disputes shall be resolved by an arbitrator. The arbitrator shall be selected on an alternating basis from a Washington D.C. area FMCS list and a list from the Official Agency Worksite of the President of Council 238. The arbitrator's decision shall not be decided based on personal appearance, but using an alternative method as specified by the arbitrator (e.g. telephone /video conference). The Arbitrator shall make their decision on how they would like to have the issue of location presented based on position statements submitted separately by the Parties. Position statements to the Arbitrator on the issue of how the Parties should present the case to the Arbitrator shall be provided in writing to the Arbitrator and to the other Party within five (5) days of the hearing date.
5. The Arbitrator shall hold the hearing notwithstanding that one party refuses to attend the arbitration. The issue to be addressed shall be the question of whether the case is properly before the Arbitrator. If the case is proper, the grievance will be heard on the merits. Copies of any transcripts, briefs, and decisions will be served on the other party. The party going forward will notify the other party of its intent, listing the date and location of the hearing.
6. Any written decision by the Arbitrator will be provided to the designated representatives of the parties in electronic format and be submitted via e-mail.

7. **Arbitration Record** - Except in emergency situations, once the arbitration record is closed, the Arbitrator will not have the authority to keep the record open to hear testimony of additional witnesses. Each party has the responsibility and obligation to produce its witnesses on the day of the hearing. For purposes of this Article, emergency has the same definition it has in 5 USC § 7106.
8. **Arbitrability and Grievability Determinations** - The Arbitrator shall have the authority to make all arbitrability and/or grievability determinations. The arbitrator shall make grievability and/or arbitrability determinations prior to addressing the merits of the original grievance.
9. Procedural arbitrability issues, such as timeliness and failure to adequately state a claim, must be raised by the Agency no later than the last grievance response.
10. **Arbitrator Decision** - The Arbitrator's decision shall be final, binding and, except for expedited or streamlined awards, precedential, and the arbitrator shall possess the authority to make an aggrieved employee whole to the extent such remedy is not limited by law, including the authority to award back pay and interest in accordance with 5 C.F.R. Part 550, Subpart H (Back Pay), reinstatement, retroactive promotion where appropriate, and to issue an order to expunge the record of all references to a disciplinary, adverse, or unacceptable performance action, if appropriate. For the purposes of this Agreement, "precedential" means an interpretation of this MCBA that is binding on the bargaining unit to the extent not contrary to law and the interpretation may be given due weight by an arbitrator hearing subsequent related matters.
11. If the arbitrator does not issue a decision in a case, the grievant may re-invoke arbitration without prejudice.
12. If the Agency contends it is not possible to implement the arbitrator's award, the Agency must inform the arbitrator and the Union as soon as possible but no later than the date the arbitrator relinquishes jurisdiction of the case. An arbitrator may extend their jurisdiction at any time
13. If it is not possible for the Agency to implement the Arbitrator's award, the arbitrator shall award a practicable alternative.
14. Arbitrators must follow applicable laws, binding Government-wide regulations, and applicable precedents.
15. **Hearing Date and Time** - The Arbitrator will set the date of the hearing with the concurrence of the Parties' representatives. Once the hearing date has been established, a Party may unilaterally request that the Arbitrator postpone, delay or reschedule the hearing. If the Arbitrator elects to do any of these, the requesting party shall pay any and all fees associated with the delay. Hearings will normally begin at 8:30 a.m. and end at 5:00 p.m. in the time zone of the arbitration hearing, unless mutually agreed otherwise.
16. **Hearing Procedures** –
 - a. The strict rules of evidence are not applicable, and the hearing shall be informal.
 - b. The parties have the right to present and cross examine witnesses and issue opening and closing statements.
 - c. The Arbitrator may exclude testimony or evidence which is determined to be irrelevant or unduly repetitious.

- d. Testimony shall be under oath or affirmation.
 - e. The Arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this MCBA, or impose on either the Agency or the Union any limitation or obligation not specifically provided for under the terms of this MCBA. The parties reserve the right to take exceptions to any award to the Federal Labor Relations Authority (FLRA). Awards may not include the assessment of expenses against either party other than as specified to in this MCBA.
 - f. The Arbitrator may draw an appropriate inference when either party fails to present facts or witnesses that the arbitrator deems necessary and relevant. If information was requested under this MCBA or Statute needed to evaluate the grievance, but the information was not provided, the failure to provide the requested information will be joined as an issue in the arbitration case. The Union may ask the arbitrator to address the issue before the hearing or as part of the arbitration decision, unless the Union has previously filed a ULP over the failure to provide the information.
17. **Witnesses** - The Agency will make employees available as witnesses when requested by the Union. If the Agency determines it is not administratively practicable to comply with the Union's request, and the arbitrator determines the employee's testimony is relevant, then the hearing may be postponed at the cost of the Agency. However, the Union may agree to the submittal of an affidavit in place of the direct testimony of the employee.
18. Bargaining history may not be used in an arbitration hearing unless the Party proposing to use it has notified the other in writing at least thirty (30) days prior to the hearing. If a Party gives notice of intent to use bargaining history, the other party may use it without providing notice. The Parties should attempt to stipulate the bargaining history of each side and bargaining history testimony may be provided virtually.
19. Grievances over the same issue and involving the same issues which are pending when grievances are assigned to an arbitrator, shall be assigned to the same arbitrator.

D. The following procedures apply to **conventional arbitration** cases only.

- 1. **Transcripts** - Transcripts will be used in conventional arbitration cases unless the Parties mutually agree otherwise. The transcript will be made by an authorized court reporter. The arbitrator and each of the Parties will be provided with a copy. All costs of the transcript will be paid by the Agency.
- 2. **Briefs** - Post-hearing briefs may be submitted.
- 3. **Presentation Order** - In disciplinary and adverse action cases, the Agency will normally make its presentation first. In all other issues, the Party requesting the arbitration will make its presentation first in the hearing, unless the Parties mutually agree to proceed otherwise.
- 4. **Arbitrator Decision** - The arbitrator will be requested to render their decision as quickly as possible, but in any event not later than thirty (30) days after the conclusion of the hearing or closing of the hearing record, including submission of briefs, unless the Parties agree to extend the time limit.

E. The following procedures apply to **expedited arbitration** only.

1. **Pre-Hearing Meeting** - Upon the request of either Party, the Parties' representatives shall meet virtually no later than five (5) workdays before the date of the arbitration hearing to clarify the issues involved in the case, to discuss their proposed witnesses and the potential testimony and to discuss any exhibits they intend to introduce during the hearing. If either Party intends to introduce an expert witness report during the hearing, such report must be provided to the opposing Party no later than fifteen (15) days in advance of the hearing.
2. Expedited cases will be heard by the same arbitrators who hear conventional cases.
3. **Arbitration Decisions**
 - a. Decisions on cases shall be issued within thirty (30) days of the close of the hearing;
 - b. The arbitrator award shall be requested not to exceed four (4) pages.
4. There will be no transcript from expedited arbitrations.
5. Neither Party may file written post-hearing briefs from expedited arbitrations.
6. Either Party has the right to submit actual copies of applicable case law, including copies of Agency-Union arbitration decisions and relevant court decisions, up to the close of the hearing.
7. Bargaining history testimony may not be introduced except by agreement of the Parties.

F. The following procedures apply to **streamlined arbitration** only.

1. **Pre-hearing meeting** - Upon the request of either Party, the Parties' representatives shall meet virtually no later than five (5) workdays before the date of the arbitration hearing to clarify the issues involved in the case, to disclose their proposed witnesses and the potential testimony and to disclose any exhibits they intend to introduce during the hearing. If either Party intends to introduce an expert witness report during the hearing, such report must be provided to the opposing Party no later than fifteen (15) days in advance of the hearing.
2. Hearings for streamlined arbitration will be conducted remotely unless the Parties agree otherwise.
3. The Arbitrator in a streamlined arbitration will issue bench decisions, to be confirmed in writing in ten days with a summary that is generally no longer than two (2) pages in length.
4. Where the facts are not in dispute, the Parties may mutually agree to submit written briefs in lieu of a hearing.
5. There will be no transcript for streamlined arbitrations.
6. Neither Party may file written post-hearing briefs in streamlined arbitrations.
7. Either Party has the right to submit actual copies of applicable case law, including copies of Agency-Union arbitration decisions and relevant court decisions, up to the close of the hearing.
8. Bargaining history testimony may not be introduced in streamlined arbitrations except by agreement of the Parties.

Section XII. Remand

In cases where an arbitration decision has been modified or rejected by a FLRA solely because the remedy was ruled illegal, the case will be remanded to the arbitrator by the Parties to fashion a new remedy, if appropriate.

Overtime, Compensatory Time, and Premium Pay

Section I. General

- A. The Parties agree all employee work shall be compensated by the Agency. Under no circumstance shall employees be required to perform work without compensation.
- B. Overtime shall be assigned and compensated consistent with OPM regulations, guidance and policies regardless of the employee's official duty station (e.g. official Agency worksite, Remote Work Location, Alternate Work Location, Temporary Duty Station, etc.).
- C. When the Agency decides to assign overtime to employee(s) who possess the requisite skills and abilities for the assignment, in the same organizational unit performing the same type of duties, the assignment(s) will be fair and equitable among qualified employees. Qualified employees assigned to a particular task during regular working hours normally will be given the opportunity to complete the assignment.
- D. The assignment of overtime will neither be distributed nor withheld as a penalty or reward.
- E. Compensation for overtime work will be made in accordance with applicable laws and regulations. When allowable under controlling laws, regulations, and Agency policies employees may request compensatory time in lieu of overtime pay. Employees will not be coerced to accept compensatory time in lieu of overtime.
- F. Overtime policies will be uniform across the Agency to ensure all work is compensated.

Section II. Work Life Balance

- A. The Agency will consider its needs versus the needs of the employee(s) including family care responsibilities, disabilities, etc. when requests are made to be excused from overtime and may seek qualified substitutes for the assignment(s).
- B. No employee will be retaliated against for requesting to be excused from overtime.
- C. Unless overtime is specifically part of an employee's position (e.g., OSCs on response duty) no employee shall be forced or coerced into working overtime.

Section III. Notification

If practicable, the Agency will provide at least forty-eight hours advance notice to employees

when a decision is made to assign overtime, or as much notice as the Supervisor is given, minus time to contact the employee.

Section IV. Travel

- A. Travel by employee(s) outside regularly scheduled duty hours is compensable through Title 5 rules and Fair Labor Standards Act (FLSA). [[HYPERLINK "https://www.opm.gov/policy-data-oversight/pay-leave/work-schedules/fact-sheets/hours-of-work-for-travel/" \h](https://www.opm.gov/policy-data-oversight/pay-leave/work-schedules/fact-sheets/hours-of-work-for-travel/)]
- B. Travel must be officially authorized.
- C. If travel time extends the employee's normal tour of duty and that employee is not otherwise compensated, the employee is eligible to earn travel compensatory time. For the purpose of compensatory time off for travel, time in a travel status includes:
 - 1. Time spent traveling between the official duty station and a temporary duty station;
 - 2. Time spent traveling between two temporary duty stations; and
 - 3. The "usual waiting time" preceding or interrupting such travel (e.g., waiting at an airport or train station prior to departure). The employing Agency has the sole and exclusive discretion to determine what is creditable as "usual waiting time." An "extended" waiting period-i.e., an unusually long wait during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes-is not considered time in a travel status.
- D. To the maximum extent practicable, time spent in travel status away from the employee's official duty station will be scheduled by the Agency within the normal working hours.

Section V. Call Back

Overtime work performed by employees called back to work outside of and unconnected with their regular work hours is deemed at least two (2) hours in duration for the purpose of overtime compensation, regardless of what portion of the two (2) hours work is performed.

Section VI. Standby Duty

Employees assigned Standby Duty including those assigned to the response roster (Response OSCs, R1, R2, Out Stationed OSCs, Phone Duty Officers, Backup Responders, etc.) shall be paid Standby pay based on the number of weeks schedule to be on the response roster; 6-7 weeks 15%; 8-9 weeks 20%; 10 or more weeks 25% at the GS-10 rate. If activated to respond to an emergency, the employee shall be paid for irregular or occasional overtime. The employee will continue to be paid overtime for irregular or occasional overtime work on removal actions, national deployments, and mission-critical work.

Section VII. Hazard Pay Differential

Hazard Pay Differential. The Agency shall pay an appropriate differential to an employee who performs a duty specified in Appendix A to Subpart I of 5 CFR 550. Documentation of the hazard shall be satisfied by the employee's submission of a request for approval of a hazardous pay differential. No direct field readings are required.

Section VIII. Other Premium Pay

Premium Pay will be paid in accordance with Title 5 and the regulation promulgated thereunder.

[HYPERLINK "<https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/premium-pay-title-5/>" \l

"::~text=Standby%20duty%20pay:%20The%20head,than%20ordinary%20periods%20of%20duty" \h].

Section IX. Waivers

The Agency shall promptly prepare and approve biweekly pay limitation waivers for emergency response work or mission-critical work.

PARS

Section I. Introduction

A. The Agency-wide performance management system is PARS; Performance Appraisal and Recognition System. This employee performance evaluation program will emphasize:

1. Linking employee position descriptions with performance elements and standards directly related to the Agency's mission, strategic goals, programs and policy objectives, and/or annual performance plans and budget priorities.
2. Providing employees with a clear understanding of what is expected of them in a result-oriented performance plan which is applied to their respective areas of responsibility and stated in terms of observable, measurable, and demonstrable performance.
3. Creating a framework for managers and employees to have an ongoing dialogue about the employee's job performance and developmental needs.
4. Differentiating between levels of performance to provide an equitable basis for personnel actions.
5. Providing managers with the mechanisms to recognize and reward excellent performers.
6. Providing a process to assist employees to improve and enhance their performance; and correct less than effective performance.
7. Providing a process for employee input into improving organizational effectiveness.

Section II. Coverage

This performance management program will cover all Agency employees represented by AFGE.

Section III. Definitions

- A. Agency Benchmark Standards are the written measures of the levels of achievement for employees' duties and responsibilities.
- B. Effective Level of Performance: The performance of an employee is at the "Effective" level which warrants advancement of the employee's rate of basic pay to the next higher step of the grade in accordance with 5 CFR Part 531.
- C. Appraisal Period: The established period of time for which performance will be reviewed and for which a rating of record will be prepared.
- D. Assumptions: Known factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective. It is understood that employees cannot be held accountable on critical elements for factors outside their control.

- E. Critical Element: A work assignment or responsibility of such importance that "unacceptable" performance on the element would result in a determination that an employee's overall performance is "unacceptable".
- F. Levels of Performance: There are three levels of performance: Distinguished, Effective, and "unacceptable".
- G. Within Grade Increase: A periodic increase in an employee's rate of basic pay from one step of the grade of her or his position to the next higher step of that grade.
- H. Interim Rating: A written rating prepared as input to the rating of record by the former supervisor when a change of supervisor occurs during the appraisal period. An employee must have completed the minimum period of performance to receive an interim rating.
- I. Measurement Source(s): Identification of sources that may establish reliable and supportable basis for a rating and may be used to determine if standards are met or not met, such as but not limited to: personal supervisory observations, employee written work products, customer, stakeholder, or feedback from team leaders.
- J. Measures and Metrics means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. Measures may include quality and timeliness of the performance of a particular duty or responsibility. Metrics may be a quantity, or an amount of work required to be performed by an employee in a particular position.
- K. Minimum Period of Performance: The minimum amount of time (90 days) that must be completed before a rating of record may be given.
- L. Non-Critical Element: A dimension or aspect of individual, team, or organizational performance, exclusive of a critical element. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance. Non-critical elements are not used in assigning a summary level.
- M. PARS: Performance Appraisal and Recognition System.
- N. Performance: Accomplishment or failure to accomplish work assignments or responsibilities.
- O. Performance Agreement: See Performance Plan.
- P. Performance Plan: All of the written, or otherwise recorded, performance elements, critical elements, non-critical elements, and performance standards that set forth expected performance. A plan must include all critical (and additional elements, if applicable) and their performance standards. This is commonly known as the performance agreement. To the extent any portion of the plan is contrary to the requirements of this Article XX, the plan will not be considered to be a valid plan. To the extent that the plan includes requirements or provisions that are contrary to any other requirement or agreement in the MCBA, the MCBA takes precedence over the contents of the plan.

- Q. Performance Assistance Plan (PAP): A written plan that is developed collaboratively between the immediate supervisor, the employee, and the Union (upon request of the employee and agreement by the supervisor) for the purpose of providing assistance to the employee to improve performance to the Effective level. The Agency shall provide a signed copy of the written PAP to the employee. The Employee shall sign the written plan to demonstrate receipt of the plan.
- R. Performance Improvement Plan (PIP): A written document from the immediate supervisor that is developed collaboratively between the immediate supervisor, the employee, and the Union (if requested by the employee) to help an employee improve performance that is ""unacceptable"" to the Effective level. The Agency shall provide a signed copy of the written PIP to the employee. The Employee shall sign the written plan to demonstrate receipt of the plan.
- S. Performance Standard: The management-approved expression of the performance requirement(s) or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, cost effectiveness, and manner of performance. Each Critical Element must have an Effective performance standard.
- T. Progress Review: A review with the employee about performance progress in critical or additional elements. A progress review shall occur at least quarterly.
- U. Rating: The written appraisal of performance compared to the performance standard(s) for each critical element on which there has been an opportunity to perform for the minimum period.
- V. Rating of Record: The performance rating prepared at the end of the appraisal period for performance over the entire period and the assignment of a summary level. This constitutes the official rating of record as defined in 5 CFR Part 430.
- W. "Unacceptable" Performance: Performance that fails to meet established performance standards in one or more of an employee's critical job elements.

Section IV. Union-Management PARS Advisory Board

- A. Union Management PARS Advisory Board: The Agency will form a Union Management PARS Advisory Board ("PARS Advisory Board") to review, evaluate and make recommendations for changes in the development and operation of PARS, including but not limited to training programs to address areas of concern (e.g., consideration of problems identified in grievances), surveys and work studies, and implementation issues for PARS. The Union representatives shall serve as participating members of the PARS Advisory Board. The Agency shall provide data and or access to data when requested by the Union. The Agency and the Union will ensure all applicable privacy protections are in place.
- B. The PARS Advisory Board will be composed of up to ten (10) members, with an equal

number of labor and management representatives.

1. The recommendation(s) of this PARS Advisory Board will be submitted to the Assistant Administrator or their designee, of the Office of Administration and Resource Management, or its successor, and the AFGE Council 238 President who shall consider the recommendations and develop an action plan as necessary.
2. The PARS Advisory Board is not the forum for the negotiations of any proposed changes to PARS.
3. The PARS Advisory Board will meet at least two times a year, at mid-year and end of year, normally March and September.
4. The Agency will provide responses to personnel data requests from the Union in a timely manner but not longer than ten (10) workdays.

C. Annual Evaluation of PARS: The PARS Advisory Board will jointly evaluate the performance management system annually.

1. A written report summarizing the findings and recommendations for the PARS system will be authored by the PARS Advisory Board and will be submitted to the Union and the Assistant Administrator of the Office of Administration and Resource Management or its successor.
2. When the Parties cannot reach consensus on findings and recommendations, each Party may issue separate documents. Each Party shall receive both reports.
3. The Union shall have the right to conduct independent studies. Supporting documentation shall be provided to both parties.

Section V. Appraisal Period

The performance appraisal period will be consistent with the Agency's fiscal year (October 1 through September 30). Performance during the previous rating period or extended rating period will not be taken into consideration in the subsequent rating period.

Section VI. Minimum Period of Performance

Only those employees who have completed a minimum 90-day appraisal period under an approved performance plan shall be evaluated, in writing, at the end of the performance cycle. The appraisal period begins when the employee signs (or chooses not to sign) the performance plan. If the minimum 90-day period cannot be met before the end of the performance cycle, the appraisal period must be extended until the 90 days are met.

Section VII. Summary Level Ratings

- A. There currently are three summary rating levels for critical job elements. Each critical element has an element rating of Distinguished, Effective, and "unacceptable".
- B. No further distinctions may be documented or recorded.

- C. Non-critical elements and other performance standards that are not critical elements are not evaluated.
- D. When an even number of Critical Elements (CE) is established for a performance plan and the summary ratings for the CEs are evenly divided, and none of the summary ratings are "unacceptable", the rating official shall "round up" and assign the summary rating.
- E. Not Ratable (NR): In the rare circumstance that an employee's performance will not be able to be observed during the appraisal period resulting in a rating of record not being prepared at the end of the appraisal period, the appraisal period shall be extended until the conditions to complete the rating of record have been met. The NR designation indicates only that the employee is not ratable for the current appraisal period and is not a rating of record. Once the conditions necessary to complete a rating of record are met, the rating of record shall be prepared as soon as practicable.
- F. Narrative Justification: All performance appraisals must contain a written narrative justification for each critical element and summary rating beyond simply stating that the standards for a particular or given critical element or that all critical elements (as regards to the summary rating) have been met, not met, exceed, etc. If no justification is available due to a lack of opportunity to perform on a particular critical element or where observation of performance was necessary, but not possible, this fact must also be noted.

Section VIII. Performance Evaluation Responsibilities

- A. Supervisors are responsible for preparing and reviewing performance plans, performance ratings, award nominations, and performance related personnel actions. While other individuals (e.g., team leaders) can provide input, the sole responsibility for the rating and performing the review lies with the supervisor.
- B. A supervisor has authority to act in the interest of the Agency to, consistent with delegation of authority, hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action. The Agency acknowledges its responsibilities and obligations under 5 CFR Part 410 and 5 CFR 430.
- C. Supervisor will evaluate the employee against their Performance Standards in a fair and objective manner. Supervisors will measure actual work performance in relation to the performance requirements of the positions to which employees are assigned and will be based on the employee's work. The Agency will not impose a quota system on employee ratings. Every employee will receive the rating they have earned based solely on their performance. Supervisors are encouraged to provide performance feedback on an ongoing basis. Supervisors are responsible for drafting the PARS document and critical elements (CEs).
- D. Employees are responsible for participating in the performance management process,

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providing input to the performance plan and preparing for and engaging in performance discussions. Employees are encouraged to seek performance feedback on an ongoing basis.

- E. Employees are responsible for requesting a Reasonable Accommodation if necessary to achieve “effective” performance. Specific Reasonable Accommodation information is available under the Reasonable Accommodations Article of the MCBA.
- F. Per the Telework Enhancement Act of 2010 5 USC 6500 et seq., teleworkers and non-teleworkers are treated the same for purposes of performance appraisals, training, rewarding, reassigning, promotions, reducing in grade, retaining, and removing employees, work requirements, or other acts involving managerial discretion.

SECTION IX: Developing Performance Plans

A. General Requirements

1. Each employee will be provided a copy of their draft Performance Plan for their position, no more than thirty (30) days after the beginning of the appraisal period. In order to facilitate collaboration, a meeting shall be scheduled at least one (1) week in advance of finalization of the Performance Plan, in order to allow the employee to provide input on their performance plan.
2. Supervisors, in collaboration with the employee, are responsible for writing performance measures for each critical element, non-critical element and performance measure in a way which will permit the accurate evaluation of job performance on the basis of objective criteria identified in the employee's position description.
3. Performance measures will include expectations of quantity, quality, and/or timeliness, and expectations concerning the manner of performance, where manner of performance is actually related to job duties and responsibilities outlined in the employees' position description.
4. Performance standards must permit the accurate evaluation of job performance. Performance plans will utilize objective criteria related to the positions and grade level in question. These criteria must be written into the performance plan and be shared with the employee.
5. Performance standards must be specific, observable, measurable, and appropriate to the employee's position description (inclusive of grade level). The performance standard must provide a clear means of assessing objectives have been met.
6. Both the critical elements and the accompanying performance standards in a performance plan must be consistent with the employee's Position Description (PD). Critical elements and performance standards that are outside the scope of the employee's PD are inappropriate. During the appraisal period it may become clear that the employee's performance plan is being interpreted to require work outside of the employee's PD. In such an instance, the supervisor will initiate a revision to the employee's PD, in accordance with applicable law and this MCBA, or change the employee's standards and/or assignments to bring them back in line with the employee's PD.

7. The supervisor is responsible for using appropriate means to keep performance plans current and accurate and to obtain the performance data required to accurately assess the employee's performance. Employees are encouraged to present any concerns about accuracy of the performance plan to the supervisor for consideration.
 8. Employees cannot be held accountable on critical elements for factors outside their control such as funding, technical failures, inadequate staffing, abolition of or disinvestment of positions, etc.
 9. When there are unresolved differences between the immediate supervisor and the employee regarding critical elements and performance standards, the employee may add written comments for consideration and final determination by the second-level supervisor.
 10. Employees will not be held accountable for supervisory goals. Such supervisory goals are the responsibility of the individual supervisor.
 11. Upon request, when establishing an employee performance plan, supervisors will permit an employee to view relevant sections of the supervisor's performance plan in order to better understand how their critical elements are affected by the cascading down of a strategic objective. The act of cascading is to take a strategic objective from the senior executive performance plan and link it to the supervisor's performance plan and to the employee's plan through a critical element. This ensures work products or services achieve the required outcomes and objectives.
 12. Employees are encouraged to take action, to remove barriers that impede their work and inform their supervisors of those barriers. Employees are encouraged to communicate up the chain of the command if the manager is non-responsive without fear of recrimination.
 13. Barring exigent circumstances, the phrase "other duties as assigned," or its equivalent, shall not be used in Performance Plans to assign work for more than 20% of the employee's duties. This does not preclude the Agency from detailing employees to other assignments in accordance with applicable laws. The Agency will assign "other duties" in a manner consistent with the employee's position description and safe and lawful work practices.
- B. Grade Controlling Factor. Supervisors shall give due consideration to an employee's grade level when developing Critical Elements, including measures for the evaluation of performance.
- C. Collaborative Development of Critical and Non-Critical Elements and Performance Measures
1. Critical elements, non-critical elements and performance measures will be established by the supervisor in collaboration with the employee.
 2. Employees are entitled to a verbal and written explanation of the rationale for their critical elements, non-critical elements and performance measures placed in their performance plan. Furthermore, the immediate supervisor and employee will discuss, face-to-face, in person or virtually, what is expected of the employee, methods and resources to achieve the critical elements, non-critical elements and performance measures, and any concerns the employee may have.

3. Each supervisor will, after meeting and conferring with each employee, identify in writing those critical elements, non-critical elements and performance measures for each employee under their supervision. Critical elements, non-critical elements and performance measures so identified must be consistent with the duties and responsibilities contained in the employee's properly classified position description, and applied in a fair, consistent, and reasonable manner.

D. Steps to Writing a Performance Plan. The steps to writing a performance plan include:

1. Identify two to five critical elements, taking into account the organizational strategic goals, functions, responsibilities, priorities, and the employee's Position Description. Non-critical elements are optional. The plan must use the Agency Benchmark Standards including any measures for each element and document assumptions. Identify two (2) to five (5) critical elements which can be rated Distinguished, Effective, and "unacceptable". Critical elements are for individual performance only and affect the employee's summary rating. Non-critical elements may be used for group performance and do not affect an employee's summary rating.
2. Supervisors must ensure that feedback relates to the employee's elements and standards, and that it establishes a reliable and supportable basis for issuing a rating. The supervisor is responsible for informing the employee of all feedback the supervisor was provided from others including feedback the supervisor did not use when assessing the employee's performance. To the extent one or more measurement sources were not factored into the supervisor's assessment, the supervisor must explain why it was not included and the efforts made to obtain the information. The employee must be given an opportunity to independently obtain the missing or unavailable information.
3. No job function can be designated a Critical Element unless "unacceptable" performance on the Critical Element would result in a determination that an employee's overall performance is "unacceptable" (5 CFR 430.203).
4. In establishing Critical Elements, non-critical elements, and performance measures, due consideration will be given to:
 - a. The resources available and the authority delegated necessary to meet the identified critical elements, non-critical elements, and performance measures;
 - b. Employee input; and
 - c. Comparable positions and grades shall have comparable performance measures.

E. Unresolved Differences. When there are unresolved differences between the immediate supervisor and the employee regarding Critical elements, non-critical elements and performance measures, the employee may add written comments for consideration and final determination by the second-level supervisor. The title of the second-level supervisor must be on the cover sheet of the Performance Plan.

F. Supervisor Responsibilities

1. Critical elements, non-critical elements and performance measures must be achievable and clear. Performance will be assessed against the Agency Benchmark Standards and any measures defined in the performance plan. Measures shall be developed collaboratively and identified at the beginning of each performance cycle, this is especially important when new measures/items are introduced.
2. Supervisors will respond to barrier issues raised by employees in the performance of their duties. Supervisors will use appropriate means to keep performance agreements current and accurate and to obtain the performance data required to accurately and objectively assess the employee's performance.

Section X: Assumptions

- A. Standards of performance will make allowances for factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective. It is understood that employees cannot be held accountable on critical elements for factors outside their control. Assumptions include but are not limited to inadequate staffing, budget, training etc.
- B. The supervisor shall work collaboratively with the employee to identify all assumptions relevant to that employee's Performance Plan. The supervisor shall then make the determination of the applicable assumptions and list them in the standard. The employee may attach their comments on assumptions to the Performance Plan. Assumptions may include, but are not limited to, travel and training funds, availability of "high visibility" assignments, and budget constraints. Overtime is not a prerequisite for a rating of "Effective"

Section XI. Content of Performance Plan

- A. Performance elements, Critical Elements, non-critical elements, and performance standards must be in writing and given to employees at the beginning of the appraisal year. To the extent the Critical Element is solely dependent on an assumption that is not met, the Critical Element will not be rated and the supervisor will note that fact on the Performance Plan.
- B. The plan must contain the following objective components:
 1. Title. "Performance Plan."
 2. Element. Name and/or description of the performance elements, critical elements, non-critical elements, and performance standards element type.
 3. Element Type (Critical or Additional). A performance plan shall contain a minimum of two critical elements and maximum of five critical elements. Non-critical elements are optional.
 4. Standard. The performance requirement(s) or expectation(s) for appraisal at a particular level of performance. A standard includes such factors as quality,

quantity, timeliness, cost effectiveness, and manner of performance, as applicable.

5. Measurement Source(s). Identification of sources that may establish reliable and supportable basis for a rating and may be used to determine if standards are met or not met, such as but not limited to: personal observations, employee written products, or feedback from team leaders that assign work.
6. Critical Element Rating. Each critical element must have an element rating of Distinguished, Effective, and ""unacceptable"".
7. Employee Signature/Date. The employee's acknowledgment of the performance plan and the date.
8. Supervisor(s)'s Signature/Date. Identification of the supervisor(s), her or his approval of the performance plan, and the date of the approval.

Section XII. Communication Performance Plans

- A. The supervisor will assure that the employee has an up-to-date position description (PD). The supervisor shall accomplish this requirement by providing the employee with a copy of their PD at the beginning of each annual performance cycle that both parties initial and date. The supervisor will ensure that the employee has an up-to-date copy of the Agency's mission and goals and, if applicable, the career ladder plan. The supervisor will initiate a dialogue with the employee to discuss the employee's duties and responsibilities in relation to the organizational unit's goals and the Agency's mission.
- B. Discussions should be candid, forthright dialogues between the supervisor and employee aimed at improving the work product. Discussions will provide the opportunity to assess accomplishments and progress and identify and resolve any problems in the employee's or work team's work product. Where indicated, the supervisor should provide additional guidance aimed at developing the employee(s) and improving the work product or outcome. Discussions will provide the employee the opportunity to seek further guidance and understanding of their work performance.
- C. It is the supervisor's responsibility to communicate the written performance expectations to employees within thirty (30) days from the start of the appraisal period, or within 30 days of the employee's arrival in a new position. This will be accomplished by an oral discussion between the supervisor and the employee of the written performance expectations.
- D. The individual employee and supervisor should discuss the plan and make any changes that are needed. The supervisor and employee may signify joint agreement with the plan by both signing and dating the plan. However, if the supervisor and employee cannot agree, the plan is established. The date the employee signs the plan, or declines to sign, is the beginning date of the minimum period of performance. If the employee declines to sign the plan, then the supervisor annotates the disagreement and date in the employee signature block.

- E. An employee that declines to sign the plan may attach their statement of concern to the performance plan and that statement of concern becomes a part of the plan which must be considered by the supervisor of record at all times when interim and final ratings are prepared. The supervisor will keep the original plan, including any attachments submitted by the employee, and the employee receives a copy within three (3) working days of the signature date.
- F. The Agency will not take a performance-based adverse action against an employee who does not have a valid Performance Plan issued by the supervisor.
- G. Subsequent discussions on the contents of the Performance Plan shall occur when there is a change in the work situation, including, but not limited to the following:
 - 1. A change in the supervisor of record;
 - 2. When the employee is detailed;
 - 3. A change in the work unit's goals or objectives;
 - 4. A change in assignments;
 - 5. A change in the work processes of the unit; or
 - 6. When an employee returns from an extended absence of ninety (90) calendar days or more.
- H. Upon request, electronic or hard copies of performance plans shall be provided to the Union.

Section XIII. Progress Reviews

- A. In addition to the annual performance appraisal, an employee shall have one formal feedback discussion (a "mid-year progress review") with the supervisor, six months into the appraisal year. This review will include a discussion on any proposed training (which may be on-the-job training) and development of the employee. At this time, employees in career ladder positions may ask their supervisors to advise them in writing of their progress towards promotion to the next grade level. However, frequent informal reviews of performance throughout the appraisal period are required and may be requested by the employee or supervisor at any time.
- B. The supervisor will be open, candid, and will be aimed at improving work products, and will provide an opportunity for feedback regarding accomplishments and individual development during progress reviews.
- C. Progress reviews shall be scheduled at least one week or more in advance in order to allow the employee to provide advance input at the option of the employee. If, during or after a progress review, an employee is in disagreement with the review or feels the supervisor has failed to note accomplishments, the employee may request a follow-up progress review and request that the supervisor correct or amend the original progress review. The supervisor shall conduct the requested follow-up progress review with the

employee within seven (7) days. If the supervisor declines to correct or amend the original progress review, the employee may attach a supplemental narrative to the progress review.

- D. Progress reviews shall be conducted in a manner that protects the privacy and dignity of the employee. The employee may request that a Union representative be present at a progress review.

Section XIV. Assessing Employee Performance

A. Interim Ratings

1. Interim ratings must be prepared for employees who have been under a performance plan for the minimum period of performance, when the employee completes a detail of ninety (90) days or more, is reassigned to another EPA organization, transfers to another agency, or when the employee's supervisor departs from that supervisory position.
2. In preparing the rating of record, interim ratings must be given consideration proportional to the amount of the appraisal period the employee and departing supervisor occupied each position. If the appraisal period is less than the minimum period of performance, only performance highlights will be provided. Performance highlights will be similar in scope as the progress reviews described above.
3. The supervisor must indicate all measurement sources and any individual's input that were considered in preparing the interim rating.
4. Employees or supervisors with language, communication and understanding barriers will not be disadvantaged in their performance appraisal. The Agency will supply the resources necessary to support the successful communication between the supervisor and the employee (eg, translator, sign language interpreter).

B. Timing of the Appraisal

1. Performance appraisals (ratings of record) are scheduled to be done annually within one month after the close of the appraisal period. Under special circumstances described below, appraisals may deviate from that schedule:
 - a. If the employee has not completed the minimum period of performance by the end of the performance cycle, then the rating of record is given at the end of the minimum period.
 - b. Whenever the employee has a change of supervisor, either by the employee leaving the organization or by the supervisor's departure, the supervisor prepares an interim appraisal, which will be input to the employee's annual appraisal. (This would not occur if the employee has not completed the minimum period of performance or if the employee leaves EPA. For periods less than 90 days, the supervisor shall provide narrative performance highlights only. Performance highlights will be similar in scope as the progress reviews described above). In the event the

supervisor leaves the position without providing an evaluation, the employee will receive a rating no lower than "effective" or the equivalent.

- c. Whenever the employee concludes a detail of 90 days or more to another position or a temporary promotion of 90 days or more, the supervisor for the detail shall prepare an interim appraisal which the supervisor for the employee's permanent position factors into the employee's annual appraisal.
- d. When there is a Performance Assistance Plan (PAP) or a Performance Improvement Plan (PIP) issued to an employee, the employee's performance period for that year is extended through the end of that PAP or PIP. The subsequent performance period begins the day after the PAP or PIP ends.

C. Assessing Employee Performance

1. The rating process requires the supervisor to assess the employee's actual performance accomplishments against the position description and corresponding standards contained in the approved Performance Plan. The supervisor will review the standard(s) established for each performance element to determine whether or not the employee met the standard(s) described in the position description
2. To the extent that an employee was assigned no work or very little work, or the employee was not given a chance to demonstrate her or his performance under a particular Critical Element, the supervisor shall not find that the employee's work was unsuccessful. For a Critical Element for which the employee has not had a legitimate opportunity to perform assigned work under a performance element or very little work was assigned, that Critical Element shall not be considered when preparing a summary level rating.
3. In the application of standards to individual employees, the Employer will consider assumptions listed in the Performance Plan.
4. The use of properly requested and approved leave shall not be a negative factor in an employee's performance rating.
5. The performance appraisal system is used as the basis for Within-Grade Increases. An employee who is deemed to be "Effective " and has achieved an "acceptable level of competency" will be entitled to an appropriate within-grade increase.
6. Eligibility for a Quality Step Increase (**QSI**) is predicated upon receipt of an "Distinguished" rating, but does not guarantee a Quality Step Increase.

D. Rating of Record Grievable. If an employee does not agree with the action taken as a result of a Performance Appraisal, including but not limited to: a demotion; within grade increase; or removal; they may grieve that action in accordance with the MCBA. An employee's rating of record is grievable under the MCBA.

Section XV. Reduction in Force (RIF)

A. In the event of a Reduction-In-Force (RIF), employees in the competitive area affected

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by the RIF who received a rating of "effective" or equivalent under the current PARS system (USA Performance) shall have their ratings evaluated for retention credit purposes.

- B. For the purposes of RIFs, union representatives on 100% official time will be accorded a rating of record of "effective" or equivalent for years they were not rated because of full time Union work.

Section XVI. Appraising Disabled Veterans

A supervisor's appraisal of an employee who is a disabled veteran, shall not be adversely impacted or affected in any way, due to the employee's absence from work to seek or receive medical treatment or assistance.

Section XVII. Appraising Employees Called to Active Duty or Volunteering for Emergency Work

- A. A supervisor's appraisal of the performance of an employee in the Armed Forces Reserve or National Guard who is called to active duty, shall not be adversely impacted due to the employee's absence from work. These employees will be accorded a rating of record of "effective" or equivalent for the time called to active duty.
- B. A supervisor's appraisal of the performance of an employee who has volunteered to assist in an emergency declared by a local, state or federal governmental agency, department or entity, and sanctioned by the Federal government or the Agency, shall not be impacted due to the employee's absence from work. These employees will be accorded a rating of record of "effective" or equivalent for the time volunteering to assist in such emergency.

Section XVIII. Protected Union Activities

- A. Union activities by an employee will not be a factor in the evaluation or appraisal of an employee's performance.
- B. Supervisors shall accommodate Union representatives in the exercise of their official union duties. Should mission critical work preclude the Union representative's immediate release, the supervisor will advise the Union representative of when they will be released from duties.
- C. A supervisor may, at the Union representative's request, reassign that Union representative's work (without prejudice to the Union representative's Performance Evaluation), to other qualified employees if the supervisor determines that the work cannot be timely performed due to the Union Officer's, Representative's or Steward's representational duties.

Section XIX. Source Appraisal Input

- A. Written performance standards and sources of appraisal input will be applied in a consistent manner in determining the rating of each assigned element. The supervisor

will ensure that input used in the appraisal process is related to the employee's critical elements. The input used will be factual and relevant.

1. The supervisor will make the employee aware if the input may adversely affect the employee's rating in order to facilitate the employee's ability to respond and to correct inaccurate input. The sources of such input will be annotated in the performance evaluation.

B. Supervisors will not withhold pertinent and objective information necessary to the appraisal of the employee's performance. In the interest of full and fair communication, supervisors will communicate areas of improvement, performance issues and other potential negative feedback within one (1) day of receipt.

Section XX. Rating a Critical Element

Employees are encouraged to provide their supervisor with a written self-assessment (e.g., list of accomplishments) at the middle and end of the appraisal period. After considering the employee's self-assessment and other appraisal input against the assigned standards, the supervisor will assign a rating to each critical element.

Section XXI. Annual Rating of Record

A. Employees will be appraised at least once a year and given a rating of record. The due date of the employee's annual rating of record will be specified on the cover sheet of the Performance Plan. The rating must be completed no later than 30 days after the due date.

B. It is understood that employees will only be evaluated on work which they have been assigned and properly trained to accomplish.

C. Supervisor must provide a narrative description for each rating.

D. Assigning the Summary Level. Once all of the critical elements (except for those where little or no work has been assigned as explained above) have been rated, the supervisor will assign the summary level (rating) as follows:

1. "Distinguished": One-half or more Critical Elements are rated "distinguished", none lower than "effective".
2. "Effective": One-half or more Critical Elements are rated "effective", none lower than "effective".
3. "Unacceptable": One or more Critical Elements is rated "unacceptable".

E. Approving the Rating of Record:

1. If the summary level is Distinguished or Effective, the supervisor must sign and date the form to approve the rating of the record.

- 2.Summary ratings of ""unacceptable"" require a higher-level management review and approval.

Section XXII. Documenting and Communicating the Rating

- A. Official documentation of the rating of record consists of the completed Performance Plan located in the current Agency's PARS System (USA Performance).
- B. Upon approval of the rating of record, the supervisor meets with the employee to conduct a formal appraisal discussion. During the private appraisal discussion, the supervisor communicates to the employee:
 - 1. How each performance element was rated, and the measurement sources and measurements used in preparing the rating;
 - 2. The rating of record; and
 - 3. If appropriate, areas that may need to be changed in the next year's performance plan.
- C. The supervisor will discuss the rating of record with the employee to avoid misunderstandings and possible inaccuracies. The discussion will be face-to-face either virtually or in person. Any rating which has a summary rating of "unacceptable" must be approved by the second level supervisor before the proposed rating of record is discussed with the employee. There is no requirement for a second level supervisor to approve a summary rating of Distinguished, or Effective.
- D. At the conclusion of the appraisal discussion, the employee may sign the Performance Plan in the current Agency PARS system (USA Performance) signifying that the appraisal discussion was held, not necessarily that the employee agrees with the rating of record. The date the employee signs or declines to sign the appraisal Performance Plan will be considered the date the rating of record was communicated to the employee. However, the employee is entitled to attach their disagreement or concerns to the rating of record. The employee is not required to prepare their written disagreement or concerns with the rating of record at the actual discussion.
- E. The employee will ordinarily receive their copy of the rating during the appraisal discussion, but no later than three (3) work days from the appraisal discussion.

Section XXIII. Recordkeeping

- A. Performance related notes, records and written observations will be applicable only to the immediate past performance year and will be expunged from the employee's and supervisor's files upon entering a new appraisal cycle. Any notes, records and written observations retained beyond the performance year will be those related to ongoing arbitrations, grievances, PAPs, PIPs, unfair labor practice charges, etc.

Section XXIV. Individual Development Plan (IDP)

The supervisor shall have at least one formal discussion concerning career goals and individual development needs with their employees per year. The Individual Development Plan (IDP)

identifies developmental needs and career objectives and is a useful tool for career development that benefits both the employee and the organization. The IDP is required if requested by the employee. The IDP process may include conducting a self-assessment; obtaining assessments from peers, superiors and customers; and identifying opportunities and other options for career growth. If a supervisor identifies required training, they will notify the employee and, if applicable, annotate the IDP.

Section XXV. Performance Assistance Plan (PAP)

- A. The purpose of the performance assistance plan (PAP) is to help the employee improve their performance.
- B. The supervisor will identify any significant performance-related problem at any time throughout the year. Significant performance-related problems include but are not limited to the employee's performance falling to unsuccessful in one or more CE. The supervisor shall meet with the employee to identify the specific performance requirement that is not being met, to work with the employee to identify the cause of the problem, and to work collaboratively to develop a plan to correct the problem.
- C. The supervisor will inform the employee of their right to have a union representative present during any PAP related meetings.
- D. The supervisor shall provide a written summary of the meeting to the impacted employee for the purpose of documenting the exact nature of corrective actions needed to meet effective performance.
- E. The employee shall disclose the need for a Reasonable Accommodation, if applicable. If the employee makes such a disclosure, no further action will be taken until a determination of the Reasonable Accommodation request is made. If the RA is approved, the employee will be given an additional period of time to bring performance to the "effective" level once the RA has been put in place.
- F. When there is a PAP or a Performance Improvement Plan (PIP) issued to an employee, the employee's performance period for that year is extended for the duration of the PAP or PIP. The subsequent performance period begins the day after the PAP or PIP ends.
- G. The PAP that is developed shall include the following:
 - 1. A written plan that outlines the assistance that the Agency will provide to the employee to assist them in meeting the effective performance threshold. The plan will afford the employee an opportunity of at least 90 days to resolve the identified performance-related deficiencies. The Agency shall provide the employee with a copy of the PAP training plan before the PAP cycle begins. The employee will sign and date the PAP training plan upon receipt.
 - 2. The plan will be tailored to the specific needs of the employee and shall include meaningful on-the-job training by a qualified subject matter expert. The training plan may also include formal training (eg, college course, tutor, coach), counseling, assignment of a journeyman mentor, or other assistance as appropriate.

3. The PAP will include a provision that supervisors will meet at least weekly with the employee to discuss progress and deficiencies.
4. At any time during the PAP the supervisor may conclude that assistance is no longer necessary based on the employee's improved performance. The supervisor will notify the employee in writing of this determination.
5. If at any time after a minimum of 80 days on the PAP, the employee's performance is determined to be "unacceptable" in one or more CEs, a formal opportunity to improve performance through a Performance Improvement Plan (PIP) will be initiated as detailed below.
6. Notwithstanding the existence of an ongoing PAP, an employee may request a transfer to another position as a means of resolving the performance issue. An employee shall not be forced to successfully complete the PAP before moving on to another position.

H. Part-Time Employees

1. The Supervisor will give due consideration to the achievability of a PAP for a part-time employee. Assignments and deliverables should be commensurate with a part-time schedule.

Section XXVI. Performance Improvement Plan (PIP)

- A. Prior to requiring an employee to go on a performance improvement plan (PIP) the Agency shall demonstrate that the employee's performance was not acceptable in one or more critical elements.
- B. The employee may request a union representative at any time during this process.
- C. After the supervisor provides evidence demonstrating that the employee is performing their assigned job duties at an "unacceptable" level, the supervisor shall develop in consultation with the employee and, if requested, their union representative, a written PIP. The goal of this PIP is to return the employee to Effective performance as soon as possible.
- D. A PIP is a document intended to identify an employee's performance deficiencies, the actions that must be taken by the employee to improve performance, along with provisions for counseling, training, or other assistance to bring performance up to "effective". Placement on a PIP for "unacceptable" performance triggers a formal opportunity period as required by 5 U.S.C. 4302(b) (6).
- E. Timing.
 1. The employee's performance rating must be based on at least 90 days under the assigned critical elements (CE). A PIP must be presented to the employee within 15 working days after the employee is formally informed in writing of performance that is "unacceptable".
 2. Following formal notification, the supervisor will take corrective action regarding performance as soon as possible including issuing a PAP to the employee when performance level becomes "unsuccessful". An employee should not immediately be placed on a PIP.

- F. A PIP should be in the form of a memorandum from the immediate supervisor to the employee. A specified beginning and ending date should designate the length of time the PIP will be in effect for 90 calendar days. At any time during the PIP the supervisor may conclude that improvement is no longer necessary based on the employee's improved performance. The supervisor will notify the employee in writing of this determination.
- G. Each PIP should be geared to the needs and circumstances of the situation. The following information should be included:
1. The employee's name, position title, series, grade, and organization location;
 2. A specific description of the requirements that must be met, in terms of quality, quantity, timeliness, or manner of performance, for work to be rated "effective".
 3. A written narrative explanation of what will be considered "effective" performance;
 4. Examples of ways the employee can improve performance and a description of the assistance the employee will receive from the supervisor;
 5. A schedule of periodic performance reviews that will be held during the PIP;
 6. A schedule of at least weekly meetings with the employee to discuss progress and deficiencies.
 7. A list of assignments with due dates, or completion dates, if appropriate;
 8. A statement that the employee is expected to maintain Effective performance on the remainder of the CEs; and
 9. Notification that failure to improve performance to Effective may result in a change to a lower grade, reassignment, or removal.
 10. The supervisor will inform the employee of their right to have a union representative present during any PAP related meetings.
- H. Implementation of a PIP.
1. Once the supervisor signs and dates the PIP, the supervisor will meet with the employee and discuss the approved PIP. The employee may invite the Union representative to be present at the PIP meeting.
 2. The employee may sign the PIP. The employee's signature on the PIP indicates that he or she received a copy, and does not signify concurrence. If the employee declines to sign, the supervisor will annotate the PIP and date the annotation. The employee will be given a copy of the PIP.
 3. The supervisor will send a copy of the PIP to the servicing Human Resources Office along with the current position description, the original performance agreement and rating package. The PIP will be filed in the Employee Performance File (EPF) and will be removed if the employee's performance improves to Effective and remains at that level for one year from the beginning of an opportunity to demonstrate Effective performance in accordance with 5 CPR 432.107(b), then destroyed (e.g., shredded).
- I. A PIP may be terminated or extended in situations such as those described below. In each case, the action will be documented by a memorandum to the employee and the employee's representative and a copy sent to the servicing Human Resources Office for

inclusion in the EPP. If the PIP is terminated because of demonstrated “effective” performance. The PIP memorandum will be removed from the EPF and destroyed after the employee's performance has continued to be Effective for one year.

1. A PIP will be terminated if the employee moves to a different position at the same or different grade. The PIP is not continued in effect in the new position.
 2. A PIP may be terminated if the employee's performance improves to Effective prior to the expiration of the PIP.
 3. A PIP will be removed from the employee's EPF if the employee leaves the Agency.
 4. A PIP may be extended at any time by the supervisor with notice to the employee and their representative. The reason for the extension will be set forth in writing to the employee and their representative.
- J. Notwithstanding the existence of an ongoing PIP, an employee may request a transfer to another position as a means of resolving the performance issue. An employee shall not be forced to successfully complete the PIP before moving on to another position.
- K. Expiration of a PIP. If a PIP is not extended or terminated by the designated expiration date, the supervisor must notify the employee and her or his designated representative in writing of the status of their performance. If the employee's performance has improved to “effective”, the supervisor must prepare a new rating of record if the opportunity period was triggered by an annual performance rating of “unacceptable”. The new rating will be sent to the appropriate Human Resources Office. The supervisor and the employee will each keep a copy. The servicing Human Resources Office will substitute the new appraisal for the previous rating of record. Once the employee has been deemed to be performing at the Effective Level, all performance-related personnel actions will be made effective.

When there is a PAP or a PIP issued to an employee, the employee's performance period for that year is extended through the duration of the PAP or PIP. The subsequent performance period begins the day after the PAP or PIP ends.

- L. Change of Supervisors while on a PIP. In the event that the employee's supervisor leaves the unit either temporarily or permanently, the employee and new supervisor, along with the employee's representative, shall meet within 15 days of the new supervisor's arrival to discuss the PIP and the employee's progress in meeting the PIP's requirements.
- M. Part-Time Employees.
1. The Supervisor will give due consideration to the achievability of a PIP for a part-time employee. Assignments and deliverables should be commensurate with a part-time schedule.

Section XXVII. Agency requirements before Employees are removed based on performance

- A. The Agency shall document prior to removal that the employee's performance was not acceptable in one or more critical elements.

B. Before removal, the Agency shall confirm:

1. That the supervisor provided a written summary of the original PAP meeting described above detailing the exact nature of the performance requirements not being met and corrective actions needed to meet effective performance
2. That the employee was invited to attend all job-related meetings that similarly situated staff were invited to attend
3. That job related training was not withheld from the employee
4. That adequate training was provided.
5. That employee's performance was measured only on the performance related to their CEs.
6. That employee was measured on tasks for their grade level. 4
7. The employee was given clear instructions that did not conflict with tasks assigned by other staff
8. That the deciding official was impartial and properly qualified to act as a deciding official in cases of removal
9. That employee was given access to emails and personnel files to prepare for potential removal proceedings

Section XXVIII. Performance Based Actions

A. Should an employee's performance continue to be "unacceptable" and the employee's performance is determined to be "unacceptable" after the reasonable opportunity to improve said performance to an acceptable level through a PIP, the supervisor will consider the following possible personnel actions:

1. Deny the employee's within grade increase in accordance with 5 CFR 531;
2. When the employee is capable of performing in a different position of the same grade, the supervisor may propose to reassign the employee to such a position in accordance with 5 CFR 430;
3. When the employee is not capable of performing in a position at the same grade but is capable of performing in a position at a lower grade, the supervisor may propose a demotion to a position at a lower grade in accordance with 5 CFR 432;
4. The supervisor may propose to remove the employee from Federal Service in accordance with 5 CFR 432.
5. The supervisor must consult with the Human Resources Office before taking any action based on "unacceptable" performance.

B. An employee whose reduction-in-grade or removal is proposed for such performance is-entitled to:

1. A 30-day advance notice of the proposed action that identifies both the specific instances of "unacceptable" performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of that performance;
2. A representative. The employee may file a written statement with the deciding official indicating the name, title (if any) and address of her or his representative(s);

3. A reasonable time, but not less than 20 calendar days, to answer orally and/or in writing;
 4. Use a reasonable amount of duty time to prepare an answer;
 5. A written decision which specifies the instances of ""unacceptable"" performance on which the reduction in grade or removal is based. The decision shall be within 30 calendar days after expiration of the advance notice period. The deciding official shall be at a higher level than the proposing official. The written decision shall be issued to the employee at or before the time the action will be effective. The decision shall inform the employee of any applicable appeal and/or grievance rights.
- C. The employee and their designated representative have a right to material relied upon in formulating the proposed adverse action (5 CFR Part 432).

Section XXIX. Employee Objections

- A. Performance Plans of Recognition Decisions. The final determination of an employee's critical elements and standards are not grievable under the negotiated grievance procedure. If an employee believes that a decision or other action taken or not taken under this performance management program resulted from a prohibited personnel practice as defined in 5 U.S.C. 2302 or an act of discrimination, the employee may: (1) file a grievance under the negotiated grievance procedure or file a charge of discrimination with the Equal Employment Opportunity Commission and/or (2) file a complaint with the Office of Special Counsel.
- B. RATING OF RECORD. An employee who disagrees with their final rating of record may file a grievance under the provisions of the Negotiated Grievance Procedures Article of this MCBA. An employee may file an allegation with the Office of Special Counsel if the employee believes the rating decision or other action taken or not taken based on the rating of record, constitutes a prohibited personnel practice as defined in 5 U.S.C. 2302 or file an equal employment opportunity (EEO) complaint.

Section XXX. Recognition

- A. A performance-based award is a method for recognizing employees' accomplishments. Excellence in performance is a basis for monetary and non-monetary award determinations and quality step increase pay decisions. The parties recognize that the use of both monetary and non-monetary awards have a significant impact on employees' morale, motivation, and performance of assigned duties. It is agreed that recognition for employee contributions will be handled in accordance with the Awards Article in the MCBA.
- B. Quality Step Increase (QSI). When the Agency determines that it intends to award a QSI due to rating level, the Agency shall collect all eligible employees whose rating of record is "distinguished" or the equivalent.
1. The Agency shall inform all employees having reached "distinguished" or the equivalent that they are eligible for a within grade increase due to rating level.

2. If more than one employee has reached “distinguished” or the equivalent rating level to qualify for a within grade increase due to rating level and there is a limited number of within grade increases that can be awarded, the employee(s) who do not receive the QSI will receive a written explanation as to why they did not receive a QSI.
3. The Agency shall articulate the standards by which it will decide who is awarded the QSI and inform the employees competing for such increase.
4. The Agency will not consider cost differential when it determines the QSI recipient.

Section XXXI. Reopener

- A. The Parties agree that the Agency has the right to modify the substance of the Performance Evaluation plan in accordance with 5 USC 7106. Should that occur, the Union will have the right to negotiate.
- B. Nothing in this Article will waive either party's rights under the law or MCBA.

Position Descriptions and Classification

Section I. Statement of Purpose

The Parties agree that position classifications shall be comparable among all Employees with the same duties and responsibilities in the Agency. Supervisors will exercise good position management and restructure positions within their organizational unit to reflect greater duties and responsibilities wherever feasible, thus enhancing opportunities for positions to be upgraded. Concerns pertaining to position classification and grade comparability will be an agenda item for the labor management meetings covered in the Labor Management Article of this MCBA.

Section II. General Information Requirements

- A. The Agency will provide each employee with a copy of their official position description (PD) that accurately reflects the major duties and responsibilities of that position: (1) upon request, (2) when starting a new position, and (3) when there is any PD change, within five (5) workdays. In the assignment of any work, the Employer will comply with applicable laws and the decisions of the Federal Labor Relations Authority.
- B. The Agency will provide the Union with access to written classification standards and qualification standards which the Agency maintains, if such are not available on the Agency's intranet site.

Section III. Position Description Improperly Classified

- A. Employees and supervisors shall discuss any discrepancies between their position descriptions and their actual duties assigned. The term "other duties as assigned" in position descriptions shall mean tasks related to the Employee's position description and shall be limited to ten (10) percent of an employee's work duties.
 - 1. The Agency shall make adjustments to the PD when it does not accurately reflect the major duties and responsibilities of the position.
 - 2. Employees may review their position description at any time in eOPF.
 - 3. The union shall be provided the position description of any employee upon request.
 - 4. To properly assess the position, the Agency will conduct a thorough analysis of the position, which requires input from both the impacted employee and the supervisor. This input may be in the form of a questionnaire, an in-person interview, or both. In some instances, the Agency may need to speak to other individuals who work with the impacted employee to gain additional insight and knowledge about the work in question.
- B. Employees who believe that their position descriptions are improperly classified have the right to discuss the matter with their supervisor.

1. Each Employee has the right to confer with the appropriate Human Resources representatives in an effort to informally resolve the matter.
 2. If the matter cannot be informally resolved, the Employee shall be furnished with information on their appeal rights and procedures as set forth in the applicable regulations.
 3. Employees may request representation from the Union on classification appeals.
- C. General Schedule Employee. Classification reviews, desk/job audits and surveys shall be performed by qualified Human Resources staff or OPM representatives and shall be conducted in accordance with 5 CFR Part 511, Subpart F. A General Schedule employee who maintains that their position is improperly classified may:
1. Request a desk audit at the local level (i.e., the HR office serving that region, lab or headquarters component). This step must happen before selecting any other options provided in this section, since an “appeal” is an appeal of the decision made at the local level.
 2. File an appeal with the Agency Director, Office of Human Resources and Organizational Services who is the Agency Appellate Authority; or
 3. If dissatisfied with the Agency’s decision, the employee may file an appeal through the Agency with OPM, or
 4. File an appeal directly with OPM.
- D. Federal Wage System Employee. A Federal Wage System employee who maintains that their position is improperly classified may:
1. Request a desk audit at the local level (i.e., the HR office serving that region, lab or headquarters component). This step must happen before selecting any other options provided in this section, since an “appeal” is an appeal of the decision made at the local level.
 2. File an appeal with the Director, Office of Human Resources and Organizational Services who is the Agency Appellate Authority; and
 3. Provide the name, address, and business telephone number of the employee’s representative, if a representative has been selected; and
 4. Provide information on other decided or pending appeals, complaints, or administrative decisions where the classification of the same position is or was an issue; and
 5. If dissatisfied with Agency’s decision the employee may file an appeal with OPM within fifteen (15) calendar days of the date of the receipt of the agency decision.

Section IV. Job Restructuring and Surveys

- A. The Agency will inform the Union of any efforts by the Agency to examine a position description(s) for a class of employees. The Union will be notified in advance of any changes in the grades of the positions that result from such Agency efforts. The Agency shall provide a description of all changes to PDs and a copy of the position descriptions.

- B. Copies of classification determinations shall be furnished to the Union.
- C. The Agency will conduct a thorough analysis of the position descriptions, which require input from both the impacted employee(s) and the supervisor(s). This input may be in the form of a questionnaire, an in-person interview, or both. In some instances, the Agency may need to speak to other individuals who work with the impacted employee(s) to gain additional insight and knowledge about the work in question.
- D. Whenever there is a dispute or confusion over the difference between grade levels of a job series, the Agency will, upon request of the Union, provide a complete and detailed list that compares the individual duties of each position, e.g., the difference between a GS-11 Permit Writer and a GS-12 Permit Writer.

Section V. Accretion of Duties

- A. When, as a result of a review requested by the Union, management or the employee, it is found that a position has been assigned higher grade duties that are regular, recurring, and above 10% of the employees' duties, the Agency will classify the position at the higher level within 30 days of the completion of the review.

Section VI. PD Requirements in Reorganizations

- A. The Agency agrees to inform the Union as soon as possible if significant changes will be made in the duties and responsibilities of positions held by employees due to reorganization or realignment of program responsibilities, or when changes in position classification standards result in changes to title, series or grade or bargaining unit status of employees.
- B. The Union may make recommendations and present supporting evidence pertaining thereto. The Union will provide its recommendations and supporting evidence within twenty (20) calendar days of the notification of the position description change. The Agency will consider the Union's recommendations and advise the Union of the results of its review within ten (10) calendar days of the Union's recommendations.

Section VII. Union Review of Position Descriptions

- A. At any time, the Union may make recommendations and present supporting evidence concerning the adequacy and equity of a standardized position description(s) or position classification standard(s).
- B. Within ten (10) calendar days, the Agency will review the Union recommendations and advise the Union of the results of its review.

Section VIII. Requirements of Classification Appeals

- A. An employee who has filed a formal classification appeal with the Agency is entitled to one (1) Union representative at a desk audit or meeting with the Agency concerning the appeal.
- B. Work will not be reassigned for the purpose of avoiding reclassification during a classification appeal.

Section IX. Requirement to Maintain Current Position Descriptions

- A. When the Agency becomes aware that the work assigned to an employee does not substantiate the employee's current grade, the Agency shall make reasonable efforts to assign work that does fit the Employee's current grade and shall inform the Union. Such reasonable efforts shall include but are not limited to reclassification without a grade change, training, or lateral reassignment.
- B. The action taken by the Agency is subject to the negotiated grievance procedure or any appeal or complaint system authorized by law or Government wide rules or regulations.

Section X. Diversity in Position Descriptions and Classifications

The Parties agree there will be diversity in the development of Position Description and Classifications. As such, the Agency will focus on skills and competency-based position descriptions and classifications.

- A. When a position currently held by an Environmental Protection Specialist (EPS) is vacated, the position will be advertised so that EPS employees can apply.
- B. When possible, the Agency will advertise positions as EPS including but not limited to merit promotion and entry level positions. Such positions will include but are not limited to inspectors, enforcement officers and analysts.

Section XI.

EPA agrees that Employees in the bargaining unit will not be assigned to any task as a reprisal or punishment.

Preamble

AFGE Council 238 (Union) and the Agency enter into this MCBA to reflect our mutual values and commitment in a manner that safeguards the rights of EPA bargaining unit employees and supports the EPA mission to protect human health and the environment. Through this contract, the Parties seek to establish mutual respect, strengthen our ability to meet the Agency's mission, and provide job assurance for bargaining unit employees by making EPA a desirable workplace for career civil servants committed to the EPA mission.

This MCBA requires respect for all Parties, including the Agency, Council 238, its affiliated locals, and AFGE-represented employees of EPA with their vast expertise. A position of mutual consideration is paramount to implementing a successful contract.

The Agency and the Union agree that the labor-management relationship is strengthened by the participation of employees in the formulation and implementation of personnel policies and practices and their conditions of employment; this is best achieved through a constructive and cooperative working relationship. The Agency and their Union representatives will engage in pre-decisional involvement in all workplace matters to the fullest extent practicable without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; and make a good-faith attempt to collaboratively and expeditiously resolve issues concerning proposed changes in conditions of employment, including those involving subjects set forth in 5 U.S.C 7106(b)(1). In order to ensure success, the Agency will provide adequate information on such matters expeditiously to Union representatives.

The Agency and the Union affirm that public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government. This contract recognizes that EPA's employees are its most valuable resource and thus should be encouraged to develop their potential to the fullest extent practicable. The Agency benefits from the long-term career commitments of Agency employees. This contract is intended to protect current bargaining unit employees and encourage them to thrive in their continued employment at the Agency as well as to support workforce development by welcoming new employees into the bargaining unit. Accomplishment of EPA's mission requires support of workforce diversity, equity, inclusion, accessibility, and employee involvement.

This MCBA is intended to recognize the realities of the 21st Century workplace by remaining flexible to technological and societal changes as they occur. The Parties agree to design a safe and healthy workplace where all employees are treated with dignity and respect.

Reasonable Accommodations and Accessibility

Section I. Introduction

The Parties agree to the commitment to be a Model Employer for people with disabilities to recruit, hire, retain and advance employees with disabilities as an important human resource that increases the quality and productivity of EPA's workforce. Section 501 of the Rehabilitation Act of 1973, as amended, and the Equal Employment Opportunity Commission's (EEOC's) regulations that implement Sections 501, 504 and 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, 794, 794d) which require Federal agencies to provide Reasonable Accommodations (RAs) to qualified employees or applicants for employment with disabilities, unless to do so would cause an undue hardship. 29 U.S.C. § 791; 29 C.F.R. § 1614.203. Section 501 incorporates the standards of Title I of the Americans with Disabilities Act (ADA), 29 U.S.C. § 791(g). Accordingly, EEOC's Rehabilitation Act regulations cross-reference ADA implementing regulations. 29 C.F.R. § 203(b); 29 C.F.R Part 1630.

Section II. Building Accessibility

All Agency offices and laboratories shall provide for complete accessibility to all employees and visitors with disabilities, as required by all federal, state and local requirements. Additionally, signs shall be placed in break rooms, rest rooms and near entrance/exit doors that provide current names, phone numbers and email addresses of appropriate primary contacts for addressing accessibility problems or needed repairs to physical accommodations used to provide accessibility. Such signs shall include raised lettering to allow the contents to be read by those with visual impairments and placed at an accessible level for all.

Section III. General Communication and Meeting Planning

- A. Generally, Agency meetings include a calendar invitation (currently Outlook) in the announcements. The agency shall include at least one contact email in all official meeting announcements and provide for documents that are shared during meetings to be obtained in advance of scheduled large-scale meetings or training sessions for the benefit of visually impaired and neurodiverse employees and others who may not be able to read documents on screen in real time.
- B. Dial-in numbers shall be provided for all large-scale virtual meetings by the Agency. Accessibility options (e.g., sign language interpreters, captioning, physical access, accessible documents, audio descriptions, technical support) shall be proactively identified and the procedures to utilize them shall be listed in meeting and training announcements, training descriptions, and at the outset of meetings or training sessions. If the Agency's meeting capabilities do not provide for adequate accessibility, the Agency must provide an accessible alternative.

Section IV. Negotiated National Reasonable Accommodations Policy (NRAP)

- A. The previously negotiated NRAP agreed to by the Agency and AFGE in 2009, as amended only by the June 5, 2018, Addendum to address issues raised by the EEOC, shall become immediately reinstated and all Reasonable Accommodation requests not yet approved shall be handled according to the previously mentioned negotiated NRAP.
- B. Within 30 calendar days of the effective date of this Article, the Parties shall develop and negotiate an updated AFGE/EPA NRAP MOU that will be used for the evaluation and implementation of all Reasonable Accommodation requests by bargaining unit employees represented by AFGE. The AFGE/EPA NRAP MOU will among other things:
 - 1. ensure that employees are aware of their rights;
 - 2. ensure that supervisors are aware of their obligations; and
 - 3. provide for a system for the Agency to process requests for reasonable accommodations in a prompt, uniform, consistent and confidential manner Agency-wide.
- C. The Parties agree all changes to the AFGE/EPA NRAP MOU agreed under paragraph B will be negotiated between the Parties.

Section V. Accommodations

- A. The Parties will work together in an effort to find and make Reasonable Accommodations to effectively accommodate the functional limitations of qualified employees with disabilities.
- B. The Agency will not require additional documentation for Reasonable Accommodations addressing permanent disabilities and may waive additional review.
- C. A qualified Reasonable Accommodation will remain in effect regardless of the position of record within the Agency.

Section VI. Requesting Employee's Use of Agency Time

Making requests for and pursuing Reasonable Accommodations are valid employee job functions. As such, a reasonable amount of duty time may be used by employees for activities related to their Reasonable Accommodation requests, as well as by union officials or non-union coworkers in assisting or representing such employees in the process.

Section VII. Reasonable Accommodations Coordinators and Supervisors

- A. The Agency's Reasonable Accommodation Coordinators (RAC) will ensure that the Agency provides accommodations for qualified employees with disabilities.
- B. The National Reasonable Accommodations Coordinator (NRAC) and/or Local Reasonable Accommodations Coordinator (LORAC) shall be recused in instances of potential conflict of interest.

- C. Employees have the right to a union representative or non-union representative in all meetings and discussions related to a Reasonable Accommodation. Management will limit participation in such meetings to the Decision-Maker (D-M) and RAC unless the employee agrees to additional participants.

Section VIII. Requests for Medical Information

- A. For the purpose of a Reasonable Accommodation request, the Agency may only request information regarding the nature, severity, and duration of the disability, along with the extent to which it limits the employee's ability to perform a major life activity or activities. Medical information to support the need may only be requested by the NRAC/LORAC but should be limited to cases where the disability or need for a Reasonable Accommodation is not known or obvious to the designated Decision-Maker. Medical information will not be shared with anyone beyond the NRAC/LORAC. Medical information shall be requested by the NRAC/LORAC only when needed, not as a *pro forma* practice.
- B. The NRAC/LORAC reviewing medical information with regard to a Reasonable Accommodation request may disclose to the Decision-Maker *only* the functional limitations to be accommodated, not the underlying medical condition or other medical details.

Section IX. Confidentiality of Reasonable Accommodation Requests

- A. The Agency will abide by the Equal Employment Opportunity Commission (EEOC) requirement for confidentiality with regard to medical information for Reasonable Accommodation requests. The EEOC states:
 - 1. The fact that someone has requested an accommodation, or that something is being provided as an accommodation, also constitutes confidential medical information. (Practical Advice for Drafting and Implementing Reasonable Accommodation Procedures Under Executive Order 13164, EEOC).
 - 2. May an employer tell other employees that an individual is receiving reasonable accommodation when employees ask questions about a coworker with a disability? No. An employer may not disclose that an employee is receiving reasonable accommodation because this usually amounts to a disclosure that the individual has a disability. (EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, EEOC).

- B. The Agency will train supervisors, HR personnel, EEO officers, IT and facility staff, and others likely to be called on to assist in facilitating or implementing an RA of the privacy and confidentiality requirements regarding any RA or disability of which they are made aware. This training will include an explanation of the limitation on disclosure applies broadly, including to any manager other than the employee's immediate supervisor (i.e., second line supervisors and above do *not* have a need to know except in rare cases), timekeepers, other employees, or anyone without a *bona fide* need to know about the Reasonable Accommodation.
- C. The Agency will not disclose that an employee has requested or is receiving a Reasonable Accommodation.
- D. The Agency will not use Reasonable Accommodation-specific timecodes in the Agency's official time keeping system (currently PeoplePlus) or other timekeeping systems.
- E. RACs and supervisors handling Reasonable Accommodation information will be required to pass an annual confidentiality certification test. No RAC or supervisor may handle confidential information who is not certified.

Section X. Protection of Confidential Medical Records

- A. The Agency will handle medical information as confidential and in compliance with the Privacy Act and the Federal Records Act. The Parties agree the NRAC is the primary official responsible for ensuring the confidentiality of all medical information obtained by the Agency in connection with a request for reasonable accommodation. The Parties agree the following precautions must be taken at a minimum to protect confidentiality:
 - 1. Encrypting and password-protecting any emails or other electronic records that transfer such information;
 - 2. Maintaining Reasonable Accommodation information in a protected system that meets the NIST guidance, Laws, Regulations, U.S. Code and Agency Policies;
 - 3. Maintaining stored electronic records on a secure, password-protected server or drive separate from the applicant's or employee's official personnel file; and
 - 4. Transferring Paper-based records only in sealed confidential envelopes and physical records maintained in locked cabinets separate from the employee's official personnel file.
- B. The Agency will strictly limit access to RA records to Agency or contractor officials with a *bona fide* need for access to the records. The Parties agree these are the limited circumstances under which the Agency may disclose confidential information, which include:
 - 1. Agency representatives who might have a need to know about limited aspects of the necessary accommodation(s) include immediate supervisor, Human Resources (HR) personnel assisting with Reassignments as an RA; Agency personnel necessary to facilitate funding, procurement or access issues needed for an RA;

- or, Agency or contractor staff needed to provide and support accessible technology and devices;
 - 2. First aid and safety personnel may be told if the disability might require emergency treatment;
 - 3. Government officials, e.g., EEOC or IG, may be provided the relevant information required to investigate the agency's compliance with the Rehabilitation Act;
 - 4. Workers' compensation offices or workers' compensation insurance carriers may be provided the information required for completion of claims; and,
 - 5. Agency EEO officials may be given the information to maintain records. EEOC also has the right to review such records, upon its request, in order to evaluate the Agency's reasonable accommodation procedures. The NRAC(s) will coordinate and are responsible for the Agency's response to any request for disclosure of such records.
- C. The release of personal information other than for a legitimate reason as noted above is a violation of the Privacy Act and appropriate remedies can be obtained for such releases of information whether intentional or not, such as grievances, complaints to the Agency's Privacy Officer, administrative actions against officials who released information, EEO actions for retaliation or harassment, or civil action under the Privacy Act or other laws.
- D. The Agency will report any known or suspected disclosure of any form of non-permitted release of an employee's confidential information to the employee within one (1) business day of an Agency official becoming aware.

Reassignments and Reorganizations

Section I. General

The provisions of the Article apply solely to reassignments within the bargaining unit(s). The Agency will notify the Union of any change in bargaining unit status in accordance with the Union Rights Article. This Article establishes procedures for making certain changes in employees' work assignments, subject to applicable law, rule, and regulation, including, but not limited to 5 C.F.R. § 330, Subpart F.

This Article shall not diminish or waive any rights that employees have under this collective bargaining agreement, law, rule, or regulation. The Agency shall not impose any prohibitions or limitations on employee rights, entitlements, or benefits unless expressly prohibited or limited under law or government-wide regulations.

Section II. Definitions

A. Reassignment is:

1. a permanent change in an employee's work location within the local commuting area (does not include application of new classification standard);
2. a permanent change to an employee's work location to which the employee is assigned outside the commuting area;
3. a permanent change in organizational assignment of an employee within their work location with or without physically relocating; or
4. the permanent physical relocation of an employee within their work location, without promotion or demotion (lateral).

B. Reorganization is a planned elimination, addition, or redistribution of functions or duties in an organization.

C. Realignment is the movement of an employee and their position when:

1. a transfer of function or an organizational change occurs;
2. the Employee stays in the same Agency; and
3. there is no change in the employee's position, grade, or pay.

Section III. Voluntary (Employee Initiated) Reassignments

- A. An employee who is reassigned will be given a reasonable period of time to learn and satisfactorily perform the functions of their new position in accordance with the Agency's approved Performance Management System as incorporated into this MCBA.
- B. An employee who is reassigned will be provided a position description of the newly

assigned position. New performance standards will be provided to match the employee's duties in the new position.

- C. When appropriate, the employee will be given a reasonable training period in which to become proficient in performing the new duties. A reasonable amount of training time will be determined on a cases-by-case basis.
- D. Reassignments will not be used in lieu of discipline.
- E. The Agency and the Union recognize that there are situations that arise during an employee's career where a personal hardship exists that could be alleviated if the employee relocated to another office and/or program area. A Hardship Reassignment is not an employee entitlement and is at the discretion of management. However, if an employee requests a hardship reassignment, the Agency will consider a change of duty station which may include a change of the work assignment. The employee must demonstrate a hardship that can be relieved by a relocation of the duty station. It is incumbent upon the employee to search for positions in locations that meet their hardship needs, and not rely on these provisions alone. Management will work with the employee to identify available positions that meet an employee's hardship needs.

Section IV. Management Initiated Reassignments

- A. Management will communicate with affected employee(s) about how and why reassignment decisions were made. The Agency will provide employees with advance written notice of a reassignment as far in advance as practical, but not less than four (4) pay periods, unless the employee requests an immediate reassignment.
- B. Within 5 days of Agency notice, affected employees will have an opportunity to provide input/feedback and ask questions concerning the implementation of their directed reassignment or their assignment of additional duties in lieu of a directed reassignment.
- C. The employee will receive a Standard Form 50 documenting the reassignment and a copy of the position description for the new position. An employee who is reassigned will be given a reasonable period of time to learn and satisfactorily perform the functions of their new position, in accordance with the Performance Management System or PARS.
- D. When employee(s) have been reassigned from a position in the last five (5) years, they will be entitled to return to a vacant position with the same title, series, and grade in the location they were forced to leave. No moving expenses are authorized in such circumstances.
- E. When employees have been reassigned, they will be given the preference for reassignment back to such positions provided that such positions have been reestablished within three (3) years of abolition, and the employees apply for such positions within fifteen (15) days of receiving written notice (to be given by the Agency) of the reestablishment of the positions.

- F. A qualification analysis for potentially affected employee(s) will be completed by the Shared Service Center prior to notifying the employee of a potential reassignment.
- G. The Union will have a representative at meetings that have been scheduled by the Agency and are held between management and an employee for the purpose of informing the employee of a directed reassignment or the assignment of additional duties in lieu of a directed reassignment. The Union may opt to not attend such meetings.
- H. The Agency will approve all relocation allowances required under the Federal Travel Regulations.
- I. The Parties will first fully explore Remote Work, Telework and alternative work schedules before reassigning or relocating an employee.
- J. Relocated employees will keep previously approved alternative work schedules unless a work-related need to change the schedule is established. Any changes to a relocated employee's alternative work schedule shall be in accordance with the current MCBA.
- K. Relocated employees reporting to a new location shall keep their existing Remote Work and Telework agreements. Any change in an employee's Telework or Remote Work Agreement shall be in accordance with the current MCBA.
- L. All Remote or Teleworking reassigned employees shall receive appropriate equipment and supplies in a timely manner. Reassigned employees shall not be required to live within the "local commuting area" of any reassigned duty station.
- M. The Agency agrees that employees who are relocating to a non-Union-affiliated office will retain their bargaining unit affiliation with AFGE and their current AFGE Local until the effective date of reassignment. AFGE bargaining unit employees will be granted all provisions subsequently negotiated into and including the actual physical report date to the non-AFGE-affiliated office.
- N. For each employee who is notified of a directed reassignment to a new location outside the commuting area, the Agency will identify the appropriate specialist who will assist them through the steps of the relevant process.
- O. The Agency agrees that errors in locality pay are beyond an employee's control. However, it is the responsibility of the employees to review their Personnel Actions and earnings and leave statements. The Agency will take immediate and appropriate action to resolve/correct errors. The Agency will notify the employee of any applicable waiver process. The Agency may waive recovery of overpayments resulting from Agency payroll provider errors under 5 U.S.C. 5584. An erroneous payment for which collection is waived is deemed to be a valid payment

- P. There shall be no adverse impact on existing EEO settlement agreements or grievance awards as a result of this Article.
- Q. Approved Reasonable Accommodations will remain in effect based on continual interactive process, including discussions, when an employee relocates to their new duty location. If a modification is requested by the employee as a result of the relocation, the proposed modification will be processed in accordance with the Reasonable Accommodation Article. This processing will be expedited but not longer than 30 days.
- R. Any employee being reassigned to a duty station greater than 50 miles from their current duty station will be provided at least 90 days' notice before being required to report for duty at the new location. If the Agency determines that there is a need to relocate an employee in a lesser period of time, then the Agency will renegotiate the employee notice timeframe with the Local Union.
- S. Retirement in lieu of acceptance of a directed reassignment to a location outside of the commuting area.
 - 1. The Agency agrees that if an employee requests and is eligible for retirement within 90 days of the report to duty date to another location, the employee will receive a directed reassignment report date for 91 days after the notice. The subject employee may work from their current duty station, or telework in accordance with the MCBA, until the report date provided in the notice.
 - 2. The Agency agrees that if an employee is eligible for retirement within 90 days of a reassignment to another location/report-to-duty date, the employee may use their accrued and earned leave to extend their report date for an additional 60 days.
 - 3. The Agency shall notify all affected employees if they are retirement eligible and their options if they receive notice of a reassignment.
 - 4. The Agency will consider reasonable requests for relocation extensions from employees who are soon to be retirement eligible.

Section V. Reassignment Due to Position Elimination

- A. If a reassignment due to position elimination occurs, the affected employee will have the option to select placement throughout the Region/Program where a need exists.
- B. If an eliminated position was reestablished within three (3) years, the employee who was reassigned because of the position eliminated will have the right of first refusal to return to such position. If there are two (2) or more affected employees for a reestablished position, the most senior employee who meets the position requirements will have preference.

Section VI. Reorganizations/Realignment

- A. Ninety (90) days prior to implementation of any organizational reorganization or realignment, the Agency shall furnish the Union with a proposed reorganization plan including Reasonableness Test Result, Functional Statement, Crosswalk, etc. and showing the present and proposed:
 - 1. number of positions;
 - 2. position title and grade levels;
 - 3. geographic location of employee offices;
 - 4. mission and function of each organizational unit;
 - 5. lines of management authority of each organizational unit; and
 - 6. organizational chart, including employee names.
- B. When a reorganization causes a personnel action involving release of a competing employee from their competitive level by separation, furlough for more than 30 calendar days, demotion, or reassignment involving displacement of another employee, reduction-in-force procedures shall be followed as required by this MCBA and OPM regulations.
- C. After a reorganization is completed and when the Agency becomes aware that the work assigned to an employee's position does not substantiate the employee's present grade, the provisions of this MCBA including but not limited to the Position Description and Classification Article shall apply.
- D. When the Agency determines that it is necessary to detail employees as part of the implementation or transition of a reorganization or realignment, the provisions of this MCBA including but not limited to Details, Promotions, & Reassignments Articles shall apply.
- E. An employee who is reassigned will be given a reasonable period of time to learn and satisfactorily perform the functions of their new position in accordance with this MCBA including but not limited to the PARS Article.
- F. An employee who is reassigned will be provided a position description of the newly assigned position. New performance standards will be provided to match the employee's duties in the new position in accordance with this MCBA including but not limited to the Position Description Article.
- G. When appropriate, the employee will be given a reasonable training period in which to become proficient in performing the new duties. A reasonable amount of training time will be determined on a cases-by-case basis.

Section VII. Hardship Reassignments

- A. If an employee requests a hardship reassignment, the Agency will consider a change of duty station which may include a change of the work assignment. The employee must demonstrate a hardship that can be relieved by a relocation of the duty station. It is incumbent upon the employee to search for positions in locations that meet their hardship needs, and not rely on these provisions alone. Management will work with the employee

to identify available positions that meet an employee's hardship needs.

- B. Affected bargaining unit employees' hardship reassignment requests shall be processed in accordance with this MCBA. Hardship Requests will be prioritized for a response and all hardship processing shall be completed no longer than seven (7) working days from request.
- C. The Agency will accommodate employee Hardship Requests, if possible, due to family difficulties and issues which would necessitate the permanent relocation of the employee. These procedures do not impede the management's ability to make employee assignments.

D. Definitions:

- 1. Hardship: Serious health condition or circumstance that affects the health and/or welfare of the employee and/or a family member and requires the employee to permanently relocate to a vacant position in another geographical area.
- 2. Vacant Position: A position in which management has an interest and an authorization to fill. A position can be considered vacant even if management has not posted a notice or announcement seeking applications for that position.
- 3. Family Member: An individual with any of the following relationships to the employee:
 - a. Spouse or domestic partner: A domestic partner is considered a partner for which the employee is in a committed (same sex or opposite sex) relationship.
 - b. Sons and daughters. This includes biological, adoptive, step or any child for which the employee, spouse or domestic partner raised under a foster care or legal guardian situation.
 - c. Parents, grandparents and grandchildren. This includes biological, adoptive, step or foster parents, or legal guardian of the employee, spouse or domestic partner.
 - d. Brothers and Sisters. This includes biological, adoptive, step or foster brothers or sisters of the employee, spouse, or domestic partner.
 - e. Aunts, Uncles or any other blood relation for whom a close bond may exist of the employee, spouse, or domestic partner. Living with an Aunt or Uncle could be considered as an example of a close bond.

E. Examples of Hardship situations or circumstances may include, but are not limited to

- 1. care for family members;
- 2. relocation of a spouse or domestic partner;
- 3. medical condition requiring relocation to a geographical area deemed medically necessary to improve or maintain health or receive health services;
- 4. Access to a medical care facility that specializes in treatment of a specific life-threatening disease or condition would qualify as a hardship (regardless if there is a general medical care facility in the employee's current location);

5. personal safety (e.g., domestic violence, divorce, etc.); and
 6. legal guardianship or adoption of minor children in another geographical area.
- F. The Agency will consider all requests to non-competitively reassign employees to a vacant position in another location due to hardship. The Agency will review and process requests for hardship reassignments in a fair and expeditious manner, but for no longer than seven (7) days. Any employee may request consideration for reassignment due to personal hardship. Employees shall be treated fairly and equitably in considering hardship reassignments. These negotiated Agency hardship reassignment procedures do not guarantee placement. If a hardship reassignment cannot be accomplished by the employee's assigned program area, the employee may utilize the Agency's established procedures to allow the employee to apply for vacant positions within the Agency.
1. Employees Hardship Reassignment Request. The Employee's request for Hardship Reassignment shall be submitted through a letter from the employee to their supervisor which explains the need for a permanent reassignment to a vacant position in another geographical location, and describes the hardship. It also includes a summary of their attempts to alleviate the hardship without permanently relocating to another geographical location.
 2. If Management requests additional information or documentation, the employee will be advised in writing of the specific information needed.
 3. The Agency must obtain a release signed by the employee and/or the employee's family member before contacting appropriate sources, when such release is required by law and/or the Privacy Act, for the purpose of clarifying any supplied documentation.
- G. Time Frames for Processing Hardship Requests.
1. The Manager or designee shall review the request and approve/disapprove within seven (7) workdays. If additional information is required, the employee will be advised in writing and will have at least seven (7) days absent exigent circumstances to obtain and submit the additional information. If not submitted, the Hardship request will be disapproved, and the decision will be provided to the employee.
 2. Upon approval the Manager or designee shall determine if there is a vacancy in the requested geographical location for which the employee is requesting a reassignment. If there is such a vacant position, the employee will have seven (7) days or a mutually agreed upon timeframe to accept or decline the offered reassignment to a vacant position. If the employee declines the placement, further consideration under hardship is forfeited. Upon declination of a position, the approved hardship application is forfeited, and the employee will not receive consideration for any other positions within the program office under the Hardship Reassignment policy.
 3. Reapplication can only be considered for changes in conditions or the expiration of one (1) year.
 4. If there is a final decision of disapproval the employee shall be notified within

three (3) days of the decision and a copy of the decision with a written justification will be provided to the employee. Should circumstances change, the employee may reapply.

- a. In the event of a final decision of denial, Management shall consider the possibility of a detail with a mutually agreed upon term. If a detail is approved, Management shall periodically review the circumstances of the denial to determine if permanent reassignment or if another option is possible. Extension of the detail may be done on a case-by-case basis.

5. If a final decision is not provided within seven (7) days, the Agency will notify the employee and provide them a reasonable time to relocate.

- H. Voluntary Change to Lower Grade. In the event the offered position results in a voluntary change to lower grade, a signed statement from the employee will be required acknowledging the agreement. Hardship reassignments shall not involve the loss of grade unless voluntarily requested by the employee. The Agency has determined that employees who accept a voluntary change to lower grade in order to receive a hardship reassignment will be assigned work commensurate with their grade level in the new position. A reasonable effort shall be made to reassign the employee to the same grade, series and rate of pay that the employee holds upon approval of the hardship reassignment. In the event a like position at the same grade is not available, and the employee agrees to accept a voluntary change to lower grade, the employee's pay will be set using the highest previous rate rule as outlined in 5 CFR 531.
- I. Position Description and Performance Standards. An employee who is reassigned due to a hardship will be provided a position description of the newly assigned position. New performance standards will be provided to match the employee's duties in the new position.
- J. Training for Newly Assigned Position. When appropriate, the employee will be given a reasonable training period in which to become proficient in performing the new duties. A reasonable amount of training time will be determined on a case-by-case basis.
- K. Travel and Relocation Expenses. Where the decision to implement a hardship reassignment is based upon an employee's application for a vacancy announcement and the position announcement states that relocation funds will be provided, the employee will not be denied relocation funds based upon the hardship reassignment. If management requests to meet the hardship reassignment employee in person, the Agency will pay all costs associated with the meeting. The Agency may consider reassigning the FTE between locations or program areas for a hardship reassignment request.
- L. Employee Assistance. The employee may request assistance and advice through the Employee Counseling Assistance Program and may authorize ECAP to share information regarding the hardship situation with Management. The Agency's career counseling and job search counseling services shall also be made available to the employee if needed.
- M. Confidentiality. Pursuant to the Privacy Act, all information in support of a hardship

reassignment or disapproval shall be confidential. All documentation obtained in connection with a request for a hardship reassignment shall be kept in files separate from the electronic Official Personnel Files (eOPFs).

- N. The Agency will provide the Union with a list of all hardship transfer requests and the number of requests accommodated annually.

Scientific Integrity

Section I. Purpose

- A. As a scientific and public health Agency, the primary goal of this Article is to empower Agency management and staff to prevent interference in scientific work and support a culture of scientific integrity. Timely enforcement of this Article in conjunction with the Agency's Scientific Integrity Policy will be effective in promoting sound science, good for morale, help with recruitment and retention and protect staff while accomplishing the mission of the Agency. The Scientific Integrity Policy prohibits managers and other Agency leadership from intimidating or coercing scientists to alter their scientific findings or professional opinions; and prohibits all employees, including scientists, managers, and other Agency leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions. This Article gives management and staff the means to enforce those prohibitions.
- B. This Article covers any Agency employee who collects, generates, uses, or evaluates scientific data, analyses, or products.

Section II. Definitions

- A. *Interference*: Unwanted or unnecessary inappropriate interference in Agency scientific work by an external or internal management person or group; the distortion, suppression or avoidance of scientific outcomes or results to meet preferred policy objectives; sidelining, marginalizing, excluding scientists to meet preferred policy objectives; failure to include scientists and scientific work in Agency science-based policymaking.
- B. *Scientific Integrity*: is the condition resulting from the Agency's adherence to professional values and practices when conducting, reporting, and applying the results of scientific activities that ensures objectivity, clarity, and reproducibility, and that provides insulation from bias, fabrication, falsification, plagiarism, inappropriate influence, political interference, censorship, and inadequate procedural and information security, or any other undue influence causing an employee to alter a scientific recommendation or finding.
- C. *Scientific Misconduct*: a manipulation or distortion of the proper scientific process that informs policy; misconduct can include allegations of mismanagement, abuse of authority, falsification or censorship that compromises the Agency's scientific record; political interference by the Agency's senior leadership can be a form of scientific misconduct.
- D. *Grievance*: the appeal process for scientific misconduct identified by employees defined in the Negotiated Grievance Procedure Article of this MCBA.

Section III. Joint Union-Management Scientific Integrity Advisory Board

- A. The Agency will form a joint Union Management Advisory Board (“Advisory Board”) to review, evaluate and make recommendations for bolstering a culture of Scientific Integrity, including but not limited to training programs to address areas of concerns (e.g., consideration of problems identified in grievances), surveys and work studies, and implementation issues. Up to ten (10) Union representatives, but no less than an equal number of management representatives shall serve as participating members of the Advisory Board. In addition, the Advisory Board will take special care to prevent the Office of Public Affairs and the Office of General Counsel from taking a leading role in policy making when a scientific matter is in dispute.
- B. The Parties agree to comply with this Article, as well as the ethics laws, regulations and guidelines that govern Executive Branch employees’ conduct, and any other relevant Agency guidance, except for those procedures for responding to and processing allegations of compromised scientific integrity, where the procedures outlined in this Article take precedence.
- C. To the extent any discussion of the advisory board involves individuals who are preparing to file or have filed formal complaints, the individuals will remain anonymous, and circumstances will remain confidential to the Parties. The Parties acknowledge that fear of retribution is a huge deterrent for staff coming forward with formal complaints.
- D. The recommendation(s) of this Advisory Board will be submitted to the Assistant Administrator or their designee, of the Office of Mission Support, or its successor should the Agency change its organizational structure, who will allow the grievance process to be applied fairly and consistently in addressing supervisory scientific misconduct.
- E. The parties to this Agreement understand that the Advisory Board is not the forum for the negotiations of any proposed changes to scientific integrity policy, laws or regulations.
- F. The Advisory Board will meet at least quarterly.
 - 1. The parties agree to conduct joint national training on scientific principles and the grievance procedure outlined in this article at least annually.
 - 2. The advisory board shall periodically review the effectiveness of the training in promoting and supporting a culture of scientific integrity, preventing political interference in scientific work at the Agency, and holding supervisors accountable for scientific misconduct.

Section IV. Employee Right to Grieve Scientific Misconduct

- A. In addition to employees set forth elsewhere in this MCBA (e.g., Employee Rights Article), employees have the right to:
 - 1. speak freely about their scientific work;

2. attend conferences;
 3. submit manuscripts for publication;
 4. conduct scientific work without fear of reprisal, intimidation, coercion, discrimination, or harassment;
 5. speak freely about a hostile work environment created by interference in scientific work; and
 6. ensure that their scientific products are released to the public in a timely manner.
- B. The Agency shall inform employees of their right to Union representation when an employee identifies a Scientific Misconduct to their supervisor.
- C. An employee shall be deemed to have exercised their option under this section when they timely initiate an action under the applicable statutory procedure or file a timely grievance in writing under the negotiated grievance procedure in this Article, whichever occurs first.
- D. Individuals found guilty of Scientific Misconduct are subject to penalties up to and including dismissal. Example of Scientific Misconduct include but are not limited to deliberately making known false, malicious, or unfounded statements against scientists, misrepresentation, falsification, exaggeration, concealment or withholding of material facts, using inaccurate or outdated criteria (eg, greenhouse gas), and interfering with a scientist's laboratory or analysis equipment.
- E. Including but limited to the following, are examples of Scientific Misconduct for which grievances can be filed pursuant to this Article:
1. pressure to alter any of their scientific work;
 2. interference in the timely release of a scientific product;
 3. a manipulation or distortion of the proper scientific process that informs policy;
 4. mismanagement, abuse of authority, falsification or censorship that compromises the Agency's scientific record;
 5. political interference by the Agency's senior leadership; and
 6. coercion, harassment, intimidation, retaliation or reprisal for identifying, speaking or writing about, or filing a complaint about a scientific integrity violation.
- F. On an annual basis, the Agency will provide to the Union a report of managers engaged in Scientific Misconduct along with the penalties assessed in each case. At least annually, the Agency will post such reports on a public-facing website.
- G. The Parties recognize that public acknowledgement of serious violations of scientific integrity at the Agency, including naming managers and detailing the nature of the issues of concern, will serve to improve the culture of scientific integrity at the Agency.

Section V. Reporting Scientific Misconduct

- A. When an employee becomes aware of or witnesses Scientific Misconduct, that employee

may report the incident to the Agency's Scientific Integrity Officer or the Agency's Ethics Official (Agency Official).

- B. The reporting employee does not waive their right to file a grievance under the Negotiated Grievance Procedures Article of this MCBA.
- C. The employee may contact the Union for representation.
- D. The Agency Official will provide the employee with written receipt of the complaint and will immediately initiate an investigation.
- E. The investigation will take no more than 30 calendar days and may include interviews, document research, etc.
- F. The Agency Official will generate an investigative report with a recommended decision. This report will be submitted to the Agency Decision Maker, generally the Deputy Administrator.
- G. The Decision Maker will render a decision within 10 calendar days of receipt of the investigative report and render a written decision. A copy of this decision will be provided to the reporting employee and the AFGE Council 238 President.

Section VI. Right of Approval of Scientific Content in Press Releases

A scientist(s) whose research is contained in an Agency press release shall have the "right of approval" of scientific content of such press release. No press release will be issued unless it has the concurrence of the scientist(s) involved. The failure to obtain scientist(s) concurrence is grievable.

Section VII. Public and Press Communication

- A. To facilitate the free flow of scientific and technological information; employee(s) may openly discuss their scientific work at conferences, meetings and with the press, provided that the employee(s) makes clear they are speaking on their own opinion and not representing the Agency.
- B. The Agency will proactively work to support the timely public release of accurate scientific information, and fully and timely cooperate with the Union regarding violations of scientific integrity.

Section VIII. Transparency and Information Sharing

- A. The Agency shall provide a public-facing website dedicated to manager accountability for Scientific Misconduct. The Agency shall make this Article available for public viewing on this website.
- B. The Joint Union-Management Scientific Integrity Advisory Board identified above shall

ensure that the public-facing website is up-to-date by reviewing the content weekly.

- C. Every year, the Advisory Board will publish on the public-facing website a report of the data related to Scientific Integrity Misconduct and the effectiveness of the training published.

Section IX. Employee Whistleblower Rights and Other Avenues for Recourse

- A. The Agency shall annually inform the employees of their rights under the Whistleblower Protection Act and their rights to be protected from retaliation and prohibited personnel practices. The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 and the U.S. Office of Special Counsel (OSC)'s Reauthorization Act of 2017 further enhance and reinforce these protections. The Parties agree that education on employee rights may be supported and enhanced by the training activities conducted by the Joint Union-Management Scientific Integrity Advisory Board.
- B. Whistleblowing is defined as the disclosure of information an employee reasonably believes evidences:
 - 1. A violation of any law, rule or regulation;
 - 2. Gross mismanagement;
 - 3. Gross waste of funds;
 - 4. An abuse of authority;
 - 5. A substantial and specific danger to public health or safety; or
 - 6. Censorship related to scientific research or analysis.
- C. Whistleblowers or employees engaging in whistleblowing activity may request Union representation at any time and may choose to go to the OSC ¹ or the Agency's Inspector General (IG) for issue resolution.

¹ The OSC is an independent agency protecting federal employees from prohibited personnel practices, including whistleblower retaliation and unlawful hiring practices. OSC provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies.

Selective Placement Programs

Section I.

The Parties hereby agree to support the Agency's Selective Placement Programs established under the provisions of the Rehabilitation Act of 1979 (P.L. 93-112), as amended by P.L. 93-516, and the Veteran's Readjustment Act of 1974 (P.L. 93-508) and in accordance with regulations and policies.

Section II.

The Agency will work with Reasonable Accommodation Coordinators in considering accommodations for known disabled employees, such as making facilities accessible; possible job restructuring; appropriate work equipment or devices; or obtaining the services of readers or sign language interpreters where appropriate.

Union Rights Article

Section I: General Provisions

- A. Employees shall be protected from restraint, interference, coercion, or discrimination in the legitimate exercise of their rights and responsibilities as designated representatives of the Union.
- B. Within the confines of laws, rules, and this Agreement, the Union has the right to designate representatives of its own choosing.
- C. No Recording Protected Union Activity: No recording will be made without mutual consent of any conversation involving 5 U.S.C. 7102 protected Union activity.
- D. Bargaining unit employees, including employees serving as Union representatives, have the following rights:
 - 1. to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right;
 - 2. to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and
 - 3. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.
- E. The Union will have the right and obligation to represent all employees in the unit and to present its views to the Employer on matters of concern, either orally or in writing. To the extent provided under this MCBA, the Agency will advise the employee of the right to Union representation as set forth in the Employee Rights Article.
- F. The Union shall have the right and responsibility to present its views to the Employer either orally or in writing.
- G. To the extent not prohibited by law, the Union may attend discrimination complaint settlement meetings.
 - 1. The Local President or designee will be notified of and be allowed to attend such meetings.
 - 2. Where the Union does not attend a settlement meeting, and the settlement agreement impacts bargaining unit working conditions, (e.g., grants, promises, or gives priority consideration for a promotion, reassignment, training, etc.) the

settlement agreement will contain the following statement: "This settlement agreement is subject to review for compliance with negotiated agreements between the EPA and AFGE. Accordingly, it will be forwarded to the appropriate Local President for a ten (10) day period of consideration. If AFGE alleges the settlement conflicts with any negotiated agreements between the EPA and AFGE, or other non-discretionary requirements, you will be notified."

3. Settlement agreements shall be sent to the Local President via e-mail or a similar means that permits verification of receipt.
4. Any challenges by the Union to EEO settlement agreements will be filed with the EPA Office of Civil Rights. The parties agree that all EEO complaint and settlement information must be kept confidential.

H. Employee Orientation

1. When orientation sessions for new employees are scheduled by the Regional office or the Shared Service Center, the appropriate Local(s) will be given notice ten (10) workdays prior to the orientation session. The notice to the appropriate Local(s) will include the number of employees who are expected to attend the orientation.
2. Prior to the scheduled reporting date of prospective employees, the Local President will be provided information electronically regarding prospective employees. The information provided will contain, at a minimum, prospective employees' names, position titles, divisions, reporting dates, official duty station and grades, but will be sanitized to conform to the requirements of the Privacy Act.
3. All new employee orientations will be held at locations determined by management and the following provisions will apply to all orientations:
 - a. The Union will be provided a thirty (30) minute period for employee orientation sessions in whatever manner the sessions are provided (i.e. electronic, telephonic, or face-to-face). This time will normally be provided immediately preceding a break.
 - b. The local parties will agree upon the time that the thirty (30) minute period described in subsection E1, above, will occur on the schedule. No Agency representatives will be present during the period of time that the Union representative(s) meet with the employees. The Union may distribute copies of the Agreement, provided by the Employer, during this session. If not, copies will be distributed by the EPA.
 - c. The Agency will introduce the Union during each orientation by showing an AFGE video, not to exceed twelve (12) minutes. If such a video is shown, the time to show such a video will be in addition to the Union's time for orientation as discussed above.
 - d. When the Agency schedules the orientation session outside of the tour of duty of the Union representatives directed to attend the session, those representatives will be given credit hours, if eligible to earn credit hours, for attending, in accordance with this Agreement. In the alternative, by

mutual agreement between the parties, the representative's tour of duty may be changed.

- e. If an employee will not be included in a group orientation, the appropriate Local will be afforded thirty (30) minutes on per employee for Union orientation. If no orientation is held or the Local did not receive notification under subsection 1B above, the appropriate Local will be afforded thirty (30) minutes to meet with the employee during duty time.
4. The Agency will include with its commitment letters the following AFGE links or their equivalent:
[HYPERLINK "http://www.joinafge.org" \h]
[HYPERLINK "http://www.afge.org" \h]
[HYPERLINK "http://www.afge238.org" \h]
[HYPERLINK "https://intranet.epa.gov/ohr/emprelations/" \h]
5. The Agency will maintain an up-to-date intranet site with AFGE contact information.
6. The Office of Human Resources will notify each Local President of any employee being hired into or transferring into a bargaining unit office, or any employee being removed from the bargaining unit list. This information will be provided electronically on a biweekly basis and include a list of the names of all new or transferred employees including:
 - a. Their positions, work locations, divisions, email address, phone number, and supervisor;
 - b. For employees leaving the Agency, whether the employee was retired or separated from the Agency;
 - c. Whether the employee is continuing to be carried in non-duty status;
 - d. Whether the employee is on a full time, part-time, seasonal, or intermittent work schedule;
 - e. Whether the employee is serving on a term, temporary, career, career-conditional, or excepted appointment;
 - f. The geographic locality of each employee that is used to determine the appropriate locality pay;
 - g. The base pay of each employee, their grade and step, pay structure, and amount of Union dues withheld; and
 - h. For employees being removed from the bargaining unit list, the reason for their removal.

I. Weingarten Rights

1. Agency shall inform employees each year on May 1st or the workday closest to May 1st of their Weingarten Rights via email.
2. Agency or the Inspector General shall inform the Union and the employee three days in advance on any meeting if Weingarten Rights will be read.
3. Any examination of an employee by a representative of the Agency in connection with an investigation where there is a reasonable belief by the employee that the examination may result in disciplinary action against the employee, the Union and the employee will be provided three days advance notice of the meeting that

- Union representation may be considered. If the employee requests Union representation, the employee has the right to Union representation in the meeting.
4. If during any examination of an employee by a representative of the Agency in connection with an investigation there is a reasonable belief by the employee that the examination may result in disciplinary action against the employee, the employee may stop the meeting and request Union representation. If the employee requests Union representation, the employee has the right to Union representation in the meeting.
 5. Security clearance meetings shall be covered by Weingarten Rights.

Section II: Formal Discussions

- A. The Union, upon notice as prescribed in this Article, will be given the opportunity to be represented at formal discussions in accordance with 5 USC § 7114(a)(2)(A).
- B. For regularly scheduled formal discussions, the notice and a meeting agenda will be provided no less than five (5) workdays in advance. Designation of the Union's meeting representative and the reporting of the Representative's time will be in accordance with the Official Time Provision of this MCBA.
- C. For non-recurring formal discussions, the Union will be provided with reasonable notice (i.e., generally not less than five (5) workdays notice) unless circumstances preclude such notice. Where a shorter notice period is necessary, the Employer will notify the Union as soon as practicable that a formal discussion will be conducted.
- D. Notice to the Union of a formal discussion will be sufficient if provided to the Local President (i.e., the one whose bargaining unit members will be attending the discussion) and includes the name of the management representative(s) conducting the discussion, an agenda containing the general subject of the discussion and the location and time of the discussion.
- E. A representative for the Local will provide the name of the designated AFGE representative to the manager or HR office that transmitted the notice.
- F. Prior to the formal discussion, the Representative may contact the management representative identified above to discuss how the meeting will be interactive to ensure compliance with Section (d), below.
- G. The Agency will announce the name of the Representative at the beginning of the meeting.
- H. Any minutes and presentation documents prepared by the Agency for the meeting and shared with bargaining unit employees will be provided to the Local president who received the notice. This does not obligate the Agency to take minutes of the meeting or prepare documents for the presentation.

- I. For the purpose of determining Union representation rights and in addition to the formal discussions referenced above, including but not limited the following, are examples of formal discussions:
 - 1. orientation sessions, both group and individual;
 - 2. presentations by a representative of the Inspector General and/or Labor Relations at training sessions, and
 - 3. “last chance” meetings and any settlement discussions regarding the last chance agreement.
- J. At any formal discussion held pursuant to this section, the Union representative will be identified. The representative may ask relevant questions and may make statements, including the Union’s position with respect to the subject of the discussion.
- K. At the conclusion of the formal discussion, the Union representative may inform employees that if any of them wish to discuss the meeting topics with them further or in private, the employee may contact the Union in accordance with the Employee Rights Article of this MCBA.
- L. The Agency will provide the Union with up to thirty (30) minutes to meet with impacted employees without managers present following all formal discussions.
- M. In the case of formal discussions conducted in accordance with this Article, the management official will delay the discussion until a Representative is available if circumstances (e.g., workload, employee safety) permit. The Local and managers are encouraged to discuss possible ways to resolve scheduling conflicts.

Section III: Labor Recognition Week

- A. The Agency will recognize one (1) week of each year, the week of May 1st annually at the national level as Labor Recognition Week. During that week, Locals may use the Employer’s cafeterias, break rooms and snack bars to set-up exhibits to publicize the contributions of organized labor, particularly AFGE, to society. Meeting rooms may also be made available in accordance with this MCBA.
- B. The Agency will notify employees of Labor Recognition Week through a mass mailer jointly prepared with AFGE Council 238 to all employees at the start of the week informing them of activities including non-duty time permitted for these activities.
- C. Consistent with workload and staffing needs, the Agency shall make every reasonable effort to grant employees one (1) hour of time to participate in Labor Recognition Week activities.
- D. Locals shall be provided with official time to prepare and conduct Labor Recognition Week activities.

Section IV: Agency Publications

The Union shall have the right to include articles in EPA's newsletters. The number of articles will be limited to one-half (1/2) of the issues. Such articles shall be limited to general topics, as opposed to individual cases or disputes between the parties and shall be subject to the "posting" rules of the use of Agency Facility Article.

Section V: Agency/Union Annual Meeting

The Agency shall meet annually with Council 238 in March of each year to review and discuss its budget, annual business and staffing plans and any transition/ reorganization issues. A copy of the initial approved budget, a full description of each line item and the annual financial operating guidelines will be provided during this meeting. Thereafter, upon request and/or when the budget is revised, the Agency will provide additional Agency-wide budget briefings to Council 238. These meetings shall be conducted on official time and will include any changes and/or reprogramming of funds to the annual budget.

Section VI: Surveys

- A. A copy of any local survey, which is intended to be distributed to bargaining unit employees by the Agency, will be provided to the appropriate Union Local for comment at least fifteen (15) days in advance of distribution to bargaining unit employees.
- B. At the national level, surveys, whether Agency-wide or within an entire Division, will be provided to AFGE Council 238 at least thirty (30) days in advance of distribution to bargaining unit employees. AFGE will inform the Agency within ten (10) days of receipt of the survey whether feedback will be provided. If AFGE does not notify the Agency within ten (10) days that feedback will be provided, the Agency may release the survey.

Section VII: Communication and Information Requests

- A. The Parties agree to strive to improve communications between the Union, Employees, and the Agency; to promote and improve Agency efficiency; and to improve the morale of the Employees. The Union shall have the right and responsibility to present its views to the Employer either orally or in writing.
- B. The Union shall have the right to communicate with Bargaining Unit(s) employees as deemed appropriate by the Union including but not limited to the use of Agency email systems, electronic bulletin boards, physical bulletin boards, desk drops, signage etc.
- C. The Agency agrees that the Union has a right to inform employees of their right to Union representation through mass mailers.
- D. Information Requests
 - 1. Upon receipt of an information request from AFGE, the Agency will notify the Union of the Labor Relations Office assigned the request, including the name,

- address, telephone number and email address of the Labor Relations Specialist responsible for complying with the request.
2. The Agency will normally inform the Union within five (5) days whether information requested under 5 USC § 7114(b)(4) will be supplied and if the Agency intends to respond by the due date identified in the request.
 3. If the Agency cannot meet the five (5) day timeframe, it will contact the Local Representative who filed the request for information to discuss the request, including any issues with responding to the request (e.g., if the Union has provided a particularized need).
 4. Where the Agency has determined to supply such information and a grievance is involved, the Union may either move forward with the grievance or may request an extension of time to file or appeal to the subsequent steps in the grievance process.
 5. At the Union's election, other time periods for filing, processing or proceeding with any matter will be held in abeyance in accordance with the provisions of this Agreement.
 6. Where requests for information that seek documents on multiple subjects or issues are numbered, the response will be similarly numbered.
- E. The Union in its representational role, has the right to participate in the formulation and implementation of policies and practices affecting conditions of employment for the bargaining unit employees including but not limited to:
1. Ample time prior to Agency decision making for the Union to participate in Pre-Decisional Involvement (PDI);
 2. Clear, proper and timely notification including use of the term "Official Notice" in the subject line of notice; and
 3. The Agency commits to evaluate in good faith Union comments and revise policies and practices as appropriate.
- F. The Agency will provide the Union with one copy of all proposed changes to Agency Orders, Directives, Manuals and issuances relating to personnel policies, practices, procedures and matters affecting working conditions of the bargaining unit at least 30 days before it becomes effective.
- G. The Agency will provide a notice and link to any final versions of Agency Orders, Directives, Manuals and issuances relating to personnel policies, practices, procedures and matters affecting working conditions.
- H. The Agency will provide the Union with a notice of all proposed reorganizations, realignments, and restructuring of any organizational unit within the Agency at least 30 days prior to the start of drafting of a functional statement and/or crosswalk.
- I. The Agency will provide a notice of any reorganization, realignment and/or restructuring of any organizational unit including a copy of the functional statement, employee crosswalk, report documenting any change in series, classification and/or

bargaining unit status of any employee(s), staff to supervisor ratios and physical moves of staff. Notice will be provided to the Union before such a package is submitted to EPA Headquarters office and/or Congress.

- J. The Agency will provide the Union advanced notice when it proposes to change the bargaining unit status of an employee. Such notice shall be provided no less than fourteen (14) business days prior to taking such action.
- K. The Agency will provide the Union a report every two (2) weeks identifying when an employee(s) is removed from or added to the bargaining unit due to transfer, detail, reassignment, promotion, etc. Such a report shall be provided to the Council President and any affected Local President.
- L. Annually, the Human Capital Officer of the Agency or designee, will provide AFGE at the national level with electronic organizational charts for each organizational unit showing the chain of command.
- M. The Agency will furnish to the Union, or its authorized representatives, upon request, and to the extent not prohibited by law, data concerning the Bargaining Unit(s) which:
 - 1. Is normally maintained by Management during the regular course of business;
 - 2. Is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
 - 3. Does not constitute guidance, advice, counsel or training provided for management officials or supervisors related to collective bargaining.
 - 4. Information requested will be provided to the Union within a reasonable time. The Agency will respond to an information request so that the information is received by the Union in a timely manner for the Union to use for the expressed purpose.
 - 5. This information request authority does not impact in any way the separate authority the Union holds to request information under the statute.

Section VIII. Representatives and Official Time

- A. The Agency fully recognizes that whatever reasonable time is spent in the conduct of Union/Agency business is spent as much in the interest of the Agency as that of the employees. The Parties share the responsibility to ensure that such time is used effectively, efficiently, and appropriately accounted for. In this regard, the use of time by a Union Representative in the conduct of their representational duties shall be charged to official time.
- B. Whenever the term "Representative" is used in this Article, it shall include Local Presidents, Local Vice-Presidents, Chief Stewards, Assistant Chief Stewards and any other employees authorized by the Union in advance to act on its behalf.

- C. The Union may designate Representatives to act on its behalf in accordance with the following:
1. Each AFGE Local shall be authorized to appoint and assign Representatives as the Local deems appropriate. There is no limit on the number of employees who may serve as Representatives.
 2. All Representatives must be bargaining unit employees or Agency retirees in good standing. Retirees serving as Representatives are subject to all security policies and procedures applicable to non-EPA employees entering Agency workspace. The Union shall make the sole determination as to where its Representatives may best be used (e.g., across the Council and/or sharing between Locals).
- D. Union Representatives shall be granted official time for participation in meetings with the Agency and any other activities described below (including official time to travel to and from such meetings as specified in this MCBA).
- E. Official time shall be granted for formal discussions with the Agency concerning grievances or personnel policies, practices or other general conditions of employment consistent with 5 USC § 7114(a)(2)(A).
- F. Employees expressly designated by the Union shall be allowed official time as Union Representatives for as provided under 5 U.S.C. 7102, including other matters reasonable, necessary, and in the public interest.
- G. The use of official time is appropriate for use by employees who are Union Representatives for attending Union-sponsored trainings, meetings, conferences etc.
- H. Notwithstanding any other provision in this Agreement, the Parties agree that any activities performed by Union Representatives relating to the internal business of the Union shall be performed during the time the Representatives are in non-duty status.
- I. Official time shall be granted in reasonable and necessary amounts to Union Representatives for representational purposes, except for the following:
1. The AFGE Council 238 President and the Executive Vice President shall be granted 100% use of official time.
 - i. When employees are newly elected or appointed to Council 238, the Union will notify the Agency.
 - ii. When a Council official leaves office, they will have a right to return to work in their position of record.
 - iii. In the event the position of record no longer exists, they shall be assigned to a comparable position in the same office.
 2. Full Time Representatives:
 - i. Locals that represent up to 200 bargaining unit employees will have one half (½) time Representative.

- ii. Locals that represent between 201 and 500 bargaining unit employees will have one (1) full time Representative.
 - iii. Locals that represent 501 to 900 bargaining unit employees will have two (2) full time Representatives.
 - iv. Locals that represent 901 to 1,200 bargaining unit employees will have three (3) full time Representatives.
 - v. Locals that represent 1,201 to 1,600 bargaining unit employees will have four (4) full time Representatives.
 - vi. Locals that represent more than 1,601 bargaining unit employees will have five (5) full time Representatives.
- J. The rating of record for Representatives designated as full time will be “fully successful” or the equivalent consistent with PARs Article.
- K. For any situation where the Agency refuses to release a Representative and/or an employee to use official time under this Article, the Agency will provide the Representative and/or the employee with a written justification for the denial of time (i.e., the reason(s) and/or rationale for the denial, including any data, etc., as appropriate).
- L. Union Representatives will inform their immediate supervisor when using official time and will record such time in the Agency timekeeping system (currently People Plus).
- M. Any employee, regardless of Union title and/or variation on the title, who is designated to act for the Union as a Representative is entitled to work official time.
- N. Credit Hours: Union Representatives, to the extent otherwise permitted by law and governing regulation and consistent with the Work Schedules Article, will be allowed to earn credit hours for performing any official time activities of this Article, including travel to and from such activities to the extent otherwise permitted by law and governing regulation.
- O. Overtime and Compensatory Time: Employees serving as Union Representatives may not earn compensatory time or overtime for representational activities. Union Representatives can work overtime or compensatory time status, to perform the work of the Agency. Union representatives will not be denied overtime or compensatory time based on official time usage during the same pay period.
- P. Telework and Remote Work. Union Representatives, who otherwise meet the criteria set forth in the Telework and Remote Work Articles of this Agreement, may perform Union activities while at the Alternate Work Location and/or the Remote Work Location.

Section IX. Union Training

- A. Upon request, the Agency will train all Union Representatives and Local Presidents on the use of virtual tools (e.g., Teams) for the purpose of participating in formal meetings electronically.

- B. Official time will be authorized for the attendance of Union Representatives at any training event provided by AFGE Council 238. The Union will provide the Agency with a copy of the agenda upon request.
- C. The Agency will pay the travel and per diem of one (1) Representative per Local per calendar year to attend AFGE Council 238 training. Representatives attending training will be on official time.
- D. The Union will submit the names of attendees for whom the Agency is paying, generally ten (10) days in advance of the training event.
- E. The Union will submit the names of attendees using Official Time in advance of the training event.
- F. Any Agency payment of travel is subject to any Agency and other government policies or requirements (including required approvals and limitations on location) for event-related spending.

Section X. Union Travel and Per Diem

- A. The parties jointly commit to the following principles as the foundation for a productive and cost-effective labor management relationship:
 - 1. Where applicable, the Agency will pay for Union travel and per diem.
 - 2. Consistent with this Agreement, the Parties will schedule meetings as efficiently as possible, including consolidating meetings when appropriate and holding certain meetings virtually.
 - 3. The parties are committed to reducing the amount of travel used for representational activities.

Section XI. Agency Commitments

- A. At the start of each fiscal year, the Parties will provide each other a list of up to three (3) contractual items where additional training of Agency managers and Union Representatives, respectively, could be beneficial to administration of this Agreement. Subsequently, the parties will provide training to Agency managers and/or Union Representatives to address these concerns.
- B. Semi-annually, the Agency will provide data to AFGE Council 238 on resolved and pending unfair labor practices, grievance filings, 4711 complaints and EEOC claims. Such data shall include but not be limited to: Local/Organization, subject matter, supervisor name, status and ultimate resolution (if any) and any other available and useful data points. Within thirty (30) days of receiving this information, the Parties will meet to discuss any noted trends and strategies for resolution. Nothing in this paragraph shall

limit the Union's right to request information or a briefing for information affecting the Union's representation of the bargaining unit.

Section XII. Union Use of Agency Facilities, Equipment and Resources

- A. The Agency will provide office space and equipment for the Local Union. The provision of any Agency controlled facilities is a matter for local level negotiations. Such facilities, equipment and resources include but are not limited to secure office space, fax machines, electronic and regular mailboxes, telephones, smart phones, bulletin boards, meeting rooms, office equipment, office supplies, internet access, IT support, and access to review laws, rules and regulations as the Agency maintains.
- B. If the Council level Union representative(s) are Remote or Teleworkers, the Agency will provide facilities, equipment, and resources upon request. If the Council level Union representative(s) are not Remote or Teleworkers, the Agency will provide facilities, equipment and resources for the Council Union President and Council Union Executive Vice President at the Official Agency Worksite.
- C. The national level and local Union representatives may use Agency-controlled facilities, equipment and resources for recruiting and membership drives.

Section XIII. Savings Clause

Nothing in this Agreement shall be interpreted in a manner that will waive employee rights under 5 U.S.C. 7102 of the Statute or the Union's rights under Title 5 Chapter 71 of the U.S. Code.

Reasonable Accommodations and Accessibility

Section I. Introduction

The Parties agree to the commitment to be a Model Employer for people with disabilities to recruit, hire, retain and advance employees with disabilities as an important human resource that increases the quality and productivity of EPA's workforce. Section 501 of the Rehabilitation Act of 1973, as amended, and the Equal Employment Opportunity Commission's (EEOC's) regulations that implement Sections 501, 504 and 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, 794, 794d) which require Federal agencies to provide Reasonable Accommodations (RAs) to qualified employees or applicants for employment with disabilities, unless to do so would cause an undue hardship. 29 U.S.C. § 791; 29 C.F.R. § 1614.203. Section 501 incorporates the standards of Title I of the Americans with Disabilities Act (ADA), 29 U.S.C. § 791(g). Accordingly, EEOC's Rehabilitation Act regulations cross-reference ADA implementing regulations. 29 C.F.R. § 203(b); 29 C.F.R Part 1630.

Section II. Building Accessibility

All Agency offices and laboratories shall provide for complete accessibility to all employees and visitors with disabilities, as required by all federal, state and local requirements. Additionally, signs shall be placed in break rooms, rest rooms and near entrance/exit doors that provide current names, phone numbers and email addresses of appropriate primary contacts for addressing accessibility problems or needed repairs to physical accommodations used to provide accessibility. Such signs shall include raised lettering to allow the contents to be read by those with visual impairments and placed at an accessible level for all.

Section III. General Communication and Meeting Planning

- A. Generally, Agency meetings include a calendar invitation (currently Outlook) in the announcements. The agency shall include at least one contact email in all official meeting announcements and provide for documents that are shared during meetings to be obtained in advance of scheduled large-scale meetings or training sessions for the benefit of visually impaired and neurodiverse employees and others who may not be able to read documents on screen in real time.
- B. Dial-in numbers shall be provided for all large-scale virtual meetings by the Agency. Accessibility options (e.g., sign language interpreters, captioning, physical access, accessible documents, audio descriptions, technical support) shall be proactively identified and the procedures to utilize them shall be listed in meeting and training announcements, training descriptions, and at the outset of meetings or training sessions. If the Agency's meeting capabilities do not provide for adequate accessibility, the Agency must provide an accessible alternative.

Section IV. Negotiated National Reasonable Accommodations Policy (NRAP)

- A. The previously negotiated NRAP agreed to by the Agency and AFGE in 2009, as amended only by the June 5, 2018, Addendum to address issues raised by the EEOC, shall become immediately reinstated and all Reasonable Accommodation requests not yet approved shall be handled according to the previously mentioned negotiated NRAP.
- B. Within 30 calendar days of the effective date of this Article, the Parties shall develop and negotiate an updated AFGE/EPA NRAP MOU that will be used for the evaluation and implementation of all Reasonable Accommodation requests by bargaining unit employees represented by AFGE. The AFGE/EPA NRAP MOU will among other things:
 - 1. ensure that employees are aware of their rights;
 - 2. ensure that supervisors are aware of their obligations; and
 - 3. provide for a system for the Agency to process requests for reasonable accommodations in a prompt, uniform, consistent and confidential manner Agency-wide.
- C. The Parties agree all changes to the AFGE/EPA NRAP MOU agreed under paragraph B will be negotiated between the Parties.

Section V. Accommodations

- A. The Parties will work together in an effort to find and make Reasonable Accommodations to effectively accommodate the functional limitations of qualified employees with disabilities.
- B. The Agency will not require additional documentation for Reasonable Accommodations addressing permanent disabilities and may waive additional review.
- C. A qualified Reasonable Accommodation will remain in effect regardless of the position of record within the Agency.

Section VI. Requesting Employee's Use of Agency Time

Making requests for and pursuing Reasonable Accommodations are valid employee job functions. As such, a reasonable amount of duty time may be used by employees for activities related to their Reasonable Accommodation requests, as well as by union officials or non-union coworkers in assisting or representing such employees in the process.

Section VII. Reasonable Accommodations Coordinators and Supervisors

- A. The Agency's Reasonable Accommodation Coordinators (RAC) will ensure that the Agency provides accommodations for qualified employees with disabilities.
- B. The National Reasonable Accommodations Coordinator (NRAC) and/or Local Reasonable Accommodations Coordinator (LORAC) shall be recused in instances of potential conflict of interest.

- C. Employees have the right to a union representative or non-union representative in all meetings and discussions related to a Reasonable Accommodation. Management will limit participation in such meetings to the Decision-Maker (D-M) and RAC unless the employee agrees to additional participants.

Section VIII. Requests for Medical Information

- A. For the purpose of a Reasonable Accommodation request, the Agency may only request information regarding the nature, severity, and duration of the disability, along with the extent to which it limits the employee's ability to perform a major life activity or activities. Medical information to support the need may only be requested by the NRAC/LORAC but should be limited to cases where the disability or need for a Reasonable Accommodation is not known or obvious to the designated Decision-Maker. Medical information will not be shared with anyone beyond the NRAC/LORAC. Medical information shall be requested by the NRAC/LORAC only when needed, not as a *pro forma* practice.
- B. The NRAC/LORAC reviewing medical information with regard to a Reasonable Accommodation request may disclose to the Decision-Maker *only* the functional limitations to be accommodated, not the underlying medical condition or other medical details.

Section IX. Confidentiality of Reasonable Accommodation Requests

- A. The Agency will abide by the Equal Employment Opportunity Commission (EEOC) requirement for confidentiality with regard to medical information for Reasonable Accommodation requests. The EEOC states:
 - 1. The fact that someone has requested an accommodation, or that something is being provided as an accommodation, also constitutes confidential medical information. (Practical Advice for Drafting and Implementing Reasonable Accommodation Procedures Under Executive Order 13164, EEOC).
 - 2. May an employer tell other employees that an individual is receiving reasonable accommodation when employees ask questions about a coworker with a disability? No. An employer may not disclose that an employee is receiving reasonable accommodation because this usually amounts to a disclosure that the individual has a disability. (EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, EEOC).

- B. The Agency will train supervisors, HR personnel, EEO officers, IT and facility staff, and others likely to be called on to assist in facilitating or implementing an RA of the privacy and confidentiality requirements regarding any RA or disability of which they are made aware. This training will include an explanation of the limitation on disclosure applies broadly, including to any manager other than the employee's immediate supervisor (i.e., second line supervisors and above do *not* have a need to know except in rare cases), timekeepers, other employees, or anyone without a *bona fide* need to know about the Reasonable Accommodation.
- C. The Agency will not disclose that an employee has requested or is receiving a Reasonable Accommodation.
- D. The Agency will not use Reasonable Accommodation-specific timecodes in the Agency's official time keeping system (currently PeoplePlus) or other timekeeping systems.
- E. RACs and supervisors handling Reasonable Accommodation information will be required to pass an annual confidentiality certification test. No RAC or supervisor may handle confidential information who is not certified.

Section X. Protection of Confidential Medical Records

- A. The Agency will handle medical information as confidential and in compliance with the Privacy Act and the Federal Records Act. The Parties agree the NRAC is the primary official responsible for ensuring the confidentiality of all medical information obtained by the Agency in connection with a request for reasonable accommodation. The Parties agree the following precautions must be taken at a minimum to protect confidentiality:
 - 1. Encrypting and password-protecting any emails or other electronic records that transfer such information;
 - 2. Maintaining Reasonable Accommodation information in a protected system that meets the NIST guidance, Laws, Regulations, U.S. Code and Agency Policies;
 - 3. Maintaining stored electronic records on a secure, password-protected server or drive separate from the applicant's or employee's official personnel file; and
 - 4. Transferring Paper-based records only in sealed confidential envelopes and physical records maintained in locked cabinets separate from the employee's official personnel file.
- B. The Agency will strictly limit access to RA records to Agency or contractor officials with a *bona fide* need for access to the records. The Parties agree these are the limited circumstances under which the Agency may disclose confidential information, which include:
 - 1. Agency representatives who might have a need to know about limited aspects of the necessary accommodation(s) include immediate supervisor, Human Resources (HR) personnel assisting with Reassignments as an RA; Agency personnel necessary to facilitate funding, procurement or access issues needed for an RA;

- or, Agency or contractor staff needed to provide and support accessible technology and devices;
 - 2. First aid and safety personnel may be told if the disability might require emergency treatment;
 - 3. Government officials, e.g., EEOC or IG, may be provided the relevant information required to investigate the agency's compliance with the Rehabilitation Act;
 - 4. Workers' compensation offices or workers' compensation insurance carriers may be provided the information required for completion of claims; and,
 - 5. Agency EEO officials may be given the information to maintain records. EEOC also has the right to review such records, upon its request, in order to evaluate the Agency's reasonable accommodation procedures. The NRAC(s) will coordinate and are responsible for the Agency's response to any request for disclosure of such records.
- C. The release of personal information other than for a legitimate reason as noted above is a violation of the Privacy Act and appropriate remedies can be obtained for such releases of information whether intentional or not, such as grievances, complaints to the Agency's Privacy Officer, administrative actions against officials who released information, EEO actions for retaliation or harassment, or civil action under the Privacy Act or other laws.
- D. The Agency will report any known or suspected disclosure of any form of non-permitted release of an employee's confidential information to the employee within one (1) business day of an Agency official becoming aware.

Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 6/13/2022 4:59:20 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]
CC: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: Preamble Working Copy
Attachments: AFGE Preamble 06132022.docx

Here's the document from our discussion this morning

Marie Owens Powell

President

AFGE Council 238

PHONE: 215-814-3384

<https://www.afge.org/>



Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 6/14/2022 7:22:10 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]
CC: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: Preamble
Attachments: Preamble 06142022.docx

As discussed today

Marie Owens Powell

President

AFGE Council 238

PHONE: 215-814-3384

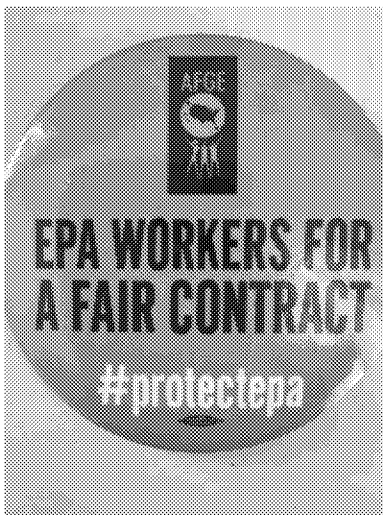
<https://www.afge.org/>



Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 6/17/2022 11:51:44 PM
To: Moseley, Kimberly [kmoseley@flra.gov]; Breslin, John [breslin.john@epa.gov]; Daniels, Alva [daniels.alva@epa.gov]; Coomber, Robert [coomber.robert@epa.gov]
CC: Kipka, Undine [kipka.undine@epa.gov]; Greaves, Natasha [Greaves.Natasha@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Simon, Heather [Simon.Heather@epa.gov]
Subject: afge counter 2
Attachments: draft settlement Agency Draft --739 FSIP.docx

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215-814-2644
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<http://www.joinafge.org/>



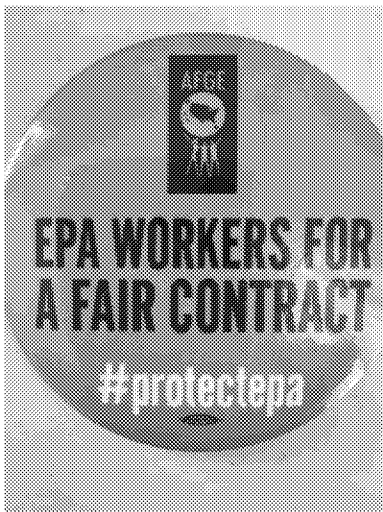
Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 6/21/2022 7:20:27 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Nicole Cantello [timeisanabstract@gmail.com]; Owens Powell, Marie [Owens.Mariejr@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: Fully signed Preamble
Attachments: Preamble -- TA -- 06152022 (fully executed).pdf

Thank you.

Joyce

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<http://www.joinafge.org/>



Preamble

AFGE Council 238 (Union) and the U.S. Environmental Protection Agency (Agency) enter into this MCBA to reflect our mutual values and commitment in a manner that safeguards the rights of EPA bargaining unit employees and supports the EPA mission to protect human health and the environment. Through this contract, the Parties seek to establish a clear mutual understanding of the Parties' rights and obligations concerning conditions of employment, to establish mutual respect, and to strengthen our ability to meet the EPA's mission. EPA's employees are its most valuable resource, and the Parties recognize the inherent dignity of every EPA employee. The Agency and the Union affirm that the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate the successful accomplishment of the mission of EPA. This contract supports the Agency, the Union, and employees in fostering long-term careers at EPA. This contract memorializes Agency, Union and employee rights and obligations.

FOR THE AGENCY

Robert Coomber June 17, 2022

Robert Coomber, EPA LERD, Date
National Chief Negotiator

FOR THE UNION

JOYCE
HOWELL

Digitally signed by JOYCE
HOWELL
Date: 2022.06.21
15:18:57 -04'00'

Joyce Howell, AFGE Council 238, Date
Chief Negotiator for Future of Work

Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 2/24/2022 7:35:47 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Smith, Kathryn [Smith.Kathryn@epa.gov]; Breslin, John [breslin.john@epa.gov]; Bracewell, Terrell [Bracewell.Terrell.R@epa.gov]
CC: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: AFGE Ground Rules 2.24.2022
Attachments: AFGE MCBA Ground Rules 022422.docx

Thank you

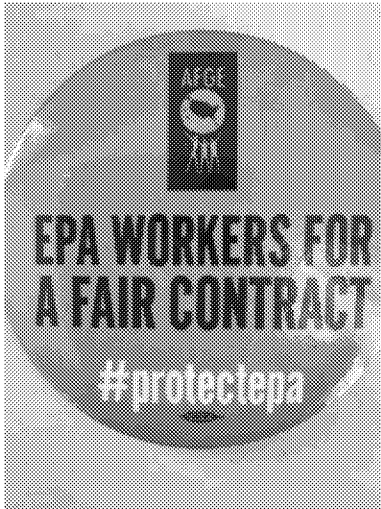
Joyce

Joyce A. Howell
EVP, AFGE Council 238
Chief Negotiator, Future of Work and MCBA
AFGE Council 238
215-814-2644
joycehowell@afge3631.org
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Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 6/29/2022 8:08:53 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Smith, Kathryn [Smith.Kathryn@epa.gov]; Breslin, John [breslin.john@epa.gov]
CC: Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Nicole Cantello [timeisanabstract@gmail.com]; Owens Powell, Marie [Owens.Mariejr@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: Mid-Term Bargaining Article
Attachments: Midterm Article -- Agency 1 .docx

Joyce A. Howell
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Chief Negotiator
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Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 6/30/2022 8:49:42 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Breslin, John [breslin.john@epa.gov]; Smith, Kathryn [Smith.Kathryn@epa.gov]; Bracewell, Terrell [Bracewell.Terrell.R@epa.gov]
CC: Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Nicole Cantello [timeisanabstract@gmail.com]; Owens Powell, Marie [Owens.Mariejr@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: FW: Mid Term
Attachments: Midterm 06302022.docx

Thank you and have a good weekend.

Joyce

From: Owens Powell, Marie <Owens.Mariejr@epa.gov>
Sent: Thursday, June 30, 2022 4:31 PM
To: Howell, Joyce <Howell.Joyce@epa.gov>
Subject: Mid Term

Marie Owens Powell

President

AFGE Council 238

PHONE: 215-814-3384

<https://www.afge.org/>



Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 7/14/2022 5:17:53 PM
To: Breslin, John [breslin.john@epa.gov]; Coomber, Robert [coomber.robert@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]; Smith, Kathryn [Smith.Kathryn@epa.gov]
Subject: Status of Articles
Attachments: status of articles.docx

Marie Owens Powell

President

AFGE Council 238

PHONE: 215-814-3384

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**AFGE/EPA
MCBA Negotiations
Status of Articles**

DEIA

- Agency thought the Union was changing their proposal
- Union was not planning to make additional changes
- ACTION – Agency to review and send counter

GRIEVANCE

- With the Agency for review
- AFGE requests the Agency's last best offer by Wednesday, 07-20-2022 and contact FMCS for outstanding matters.

ARBITRATION

- With the Agency for review
- AFGE requests the Agency's last best offer by Wednesday, 07-20-2022 and contact FMCS for outstanding matters.

MID TERM NEGOTIATIONS

- With the AFGE for review and send counter

PARs

- AFGE has the Agency's proposal and needs to provide comments/discussion

PROMOTIONS

- Agency has AFGE's proposal and needs to provide comments/discussion

Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 2/28/2022 8:43:18 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]
Subject: COVID Safety et al MOU

I have sent 2 appointments to discuss the COVID Safety et al MOU and the newest guidance. The first meeting (Tuesday) is to touch base on what we know and identify what needs to be addressed in the MOU. The second meeting (Wednesday) is to get more into the weeds with specific discussions. Bob, I know you indicated a Friday deadline. I am going to schedule a couple more meetings for Thursday and Friday morning to try to meet this OMB imposed deadline.

Marie Owens Powell

President

AFGE Council 238

PHONE: 215-814-3384

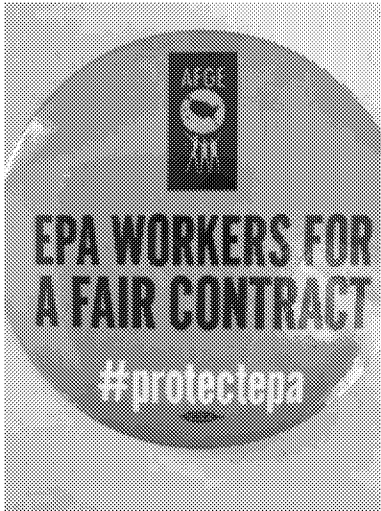
<https://www.afge.org/>

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Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 7/28/2022 7:35:56 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Breslin, John [breslin.john@epa.gov]; Smith, Kathryn [Smith.Kathryn@epa.gov]; Sanders, Amy [Sanders.Amy@epa.gov]
CC: Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Nicole Cantello [timeisanabstract@gmail.com]; Owens Powell, Marie [Owens.Mariejr@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: AFGE Midterm Article
Attachments: Midterm 07-28-2022.docx

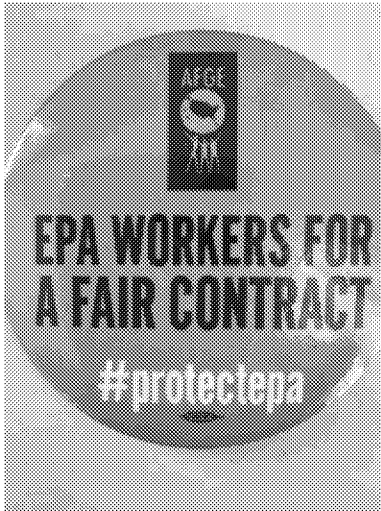
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Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 7/28/2022 7:33:41 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Smith, Kathryn [Smith.Kathryn@epa.gov]; Breslin, John [breslin.john@epa.gov]; Sanders, Amy [Sanders.Amy@epa.gov]
CC: Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Nicole Cantello [timeisanabstract@gmail.com]; Owens Powell, Marie [Owens.Mariejr@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: Grievance and Arbitration
Attachments: Mediation Chart Grievance and Arbitration 07-28-2022.docx

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Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 8/10/2022 8:36:14 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Howell, Joyce [Howell.Joyce@epa.gov]; Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: Merit Promotion & Career Ladders
Attachments: Merit Promotion 08-10-22 AFGEAgency.docx; Career Ladder 08-09-2022 AFGEAgency.docx

Marie Owens Powell

President

AFGE Council 238

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Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 8/11/2022 8:20:13 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Howell, Joyce [Howell.Joyce@epa.gov]
CC: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: Grievance & Arbitration Chart
Attachments: Mediation Chart -- Grievance and Arbitration 08-11-2022.docx

Marie Owens Powell

President

AFGE Council 238

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Message

From: Owens Powell, Marie [Owens.Mariejr@epa.gov]
Sent: 8/11/2022 8:51:41 PM
To: Coomber, Robert [coomber.robert@epa.gov]
CC: Howell, Joyce [Howell.Joyce@epa.gov]; Owens Powell, Marie [Owens.Mariejr@epa.gov]
Subject: Status of open articles
Attachments: status of articles 08-11-2022.docx

Bob,

As discussed this afternoon, attached is my running list on the status of the open articles for MCBA negotiations.

Thanks

Marie Owens Powell

President

AFGE Council 238

PHONE: 215-814-3384

<https://www.afge.org/>



**AFGE/EPA
MCBA Negotiations
Status of Articles**

DEIA

- Agency thought the Union was changing their proposal
- Union was not planning to make additional changes
- Union made changes and sent back to Agency. 7/14/2022
- Union to review Agency counter proposal provided 08-11-2022

GRIEVANCE

- With the Agency for review
- AFGE requests the Agency's last best offer by Wednesday, 07-20-2022 and contact FMCS for outstanding matters.
- AFGE meeting Friday 7/22/2022 to identify issues for mediation.
- Both parties to review mediation chart as discussed 08-11-2022

ARBITRATION

- With the Agency for review
- AFGE requests the Agency's last best offer by Wednesday, 07-20-2022 and contact FMCS for outstanding matters.
- Agency to present counter week of 7/25/2022
- Both parties to review mediation chart as discussed 08-11-2022

MID TERM NEGOTIATIONS

- With the AFGE for review and send counter
- To be discussed with Agency week of 7/25/2022
- AFGE to review Agency's counter

PARs

- AFGE has the Agency's proposal and needs to provide comments/discussion
- To be discussed with Agency week of 7/25/2022
- AFGE to review Agency's counter

PROMOTIONS

- Agency has AFGE's proposal and needs to provide comments/discussion
- To be discussed 7/25/2022.
- Agency to review AFGE's counter

Message

From: Howell, Joyce [Howell.Joyce@epa.gov]
Sent: 3/11/2022 4:58:03 PM
To: Coomber, Robert [coomber.robert@epa.gov]; Owens Powell, Marie [Owens.Mariejr@epa.gov]
CC: John Howard [John.Howard@afge.org]; Cantello, Nicole [cantello.nicole@epa.gov]; Copt, Britta [Copt.Britta@epa.gov]; Dreyfus, Bethany [Dreyfus.Bethany@epa.gov]; Guster, Edward [Guster.Edward@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Kipka, Undine [kipka.undine@epa.gov]; Myers, Dianna [Myers.Dianna@epa.gov]; Paff, Patricia [paff.patricia@epa.gov]
Subject: RE: Latest Ground Rules?
Attachments: AFGE MCBA Ground Rules 03112022.docx

Here it is!

Ex. 3 - 5 U.S.C. §7114(b)(4)

Alcohol and Drug-Free Workplace

Section I. Purpose

The Agency will administer its Alcohol and Drug-Free Workplace program in accordance with this Agreement and all applicable laws, regulations, and rules including Executive Order 12564 dated 9/15/1986, EPA Order 3120.3A dated 3/18/1980, and US EPA Drug-free Workplace Plan (1000)(EDWP) dated 1/16/1998 found at [\[HYPERLINK](#)

Ex. 6 Personal Privacy (PP)

This Article will be applied in a manner aligned with federal law and policy and will not be applied more restrictive than federal policy¹.

Section II. Agency Responsibilities

- A. It is the responsibility of Agency management to take disciplinary and/or adverse action when the use of alcoholic beverages and/or drugs impairs an employee's performance, attendance or conduct, when an employee uses federally illegal drugs on or off duty, or when an employee possesses federally illegal drugs on duty or in a federal facility.
- B. Disciplinary action is not required if an employee:
 - 1. Voluntarily admits their federally illegal drug use before being:
 - a. identified by other means, or
 - b. notified to report for a drug test.
 - 2. Thereafter, obtains counseling or rehabilitation through the Agency's Employee Counseling and Assistance Program (ECAP) or other approved health care provider;
 - 3. Thereafter refrains from illegal drug use; and
 - 4. To ensure that such employees do refrain from illegal drug use they may be subject to testing on a more frequent basis pursuant to the EDWP §X(c). It is the responsibility of the Agency to refer any employee who is found to use federally illegal drugs to an ECAP for assessment, counseling, and referral for treatment or rehabilitation as appropriate.
- C. The Agency shall not allow any employee to remain on duty in a sensitive position who is found to use federally illegal drugs prior to successful completion of rehabilitation through the ECAP or other approved rehabilitation program. However, as part of a rehabilitation or counseling program, the Administrator (or designee) may, in their discretion, allow an employee to return to duty in a sensitive position if it is determined that this action would not pose a danger to public health or safety or national security.
- D. An employee's cooperation in availing themselves of professional health care assistance will be considered by the Agency when proposing or deciding disciplinary action related to the

¹ The Parties acknowledge that marijuana is a federally illegal drug. It is acknowledged that the legality at the state level of certain federally illegal drugs/cannabis has and continues to evolve since the issuance of EO 12564, EPA Order 3120.3A (3/18/1980), and the EDWP, and that the use of cannabis for medical purposes is legal in a majority of states. Federal guidance regarding consideration of marijuana use for federal employees, contractors and applicants is also evolving [see 2021 Kathleen McGettigan OPM memorandum, "Assessing the Suitability/Fitness of Applicants or Appointees on the Basis of Marijuana Use; Maintaining a Drug-Free Workplace"].

use of drugs and/or alcohol.

Section III. Employee Responsibilities

- A. As a condition of continued employment, employees must refrain from the use of federally illegal drugs, on or off duty, and the possession of federally illegal drugs on duty or in a federal facility. Employees must refrain from the use of alcohol while on federal property and and/or being impaired due to alcohol while in a duty status. The only exception to this standard is when alcohol consumption is approved by management at an Agency-sanctioned event.
- B. Employees who suspect that they have a drug or alcohol problem are encouraged to voluntarily seek information and counseling through the Agency ECAP or other approved health care provider on a confidential basis at the earliest opportunity.
- C. Employees will not be subject to discipline for self-reporting as set forth in Section 2a – c, above, unless there has been other misconduct for which discipline would normally be appropriate. An employee's cooperation in availing themselves of professional health care assistance will be considered by the Agency when proposing or deciding disciplinary action related to use of drugs and/or alcohol.

Section IV. Random Testing of Employees in Testing-Designated Positions

- A. The Agency will designate positions subject to random drug testing referred to as Testing-Designated Positions (TDP). If an employee's position is changed to a TDP, the employee will be notified in writing at least 30-days prior to the change. Such notices will include at a minimum:
 - 1. That the employee is subject to mandatory random testing;
 - 2. The consequences of a positive result or refusal to cooperate, including adverse action;
 - 3. That after any confirmed positive drug test there will be an opportunity for them to submit supplemental medical documentation to support the legitimate use of a specific drug;
 - 4. That drug and alcohol abuse counseling and referral services are available through the ECAP. The employee can seek counseling and or treatment voluntarily prior to testing without reprisal. The notice will contain information on how to contact the ECAP.
- B. Employees selected for random testing will be selected randomly on the basis of neutral criteria. The basic required random testing program shall not be used to single out any individual employee or group of employees for increased frequency of testing.
- C. An employee who is selected to report for random drug testing shall be notified orally two (2) hours prior to the time they are to report. In cases where employees are on Telework or Remote Work status, the Agency will follow the provisions for recall under those Articles. Whenever possible, this oral notification will be confirmed promptly by electronic mail. Oral notification will be made as discreetly as possible. The employee will be provided the following information at a minimum:

1. That they were randomly selected and are not under suspicion of taking illegal drugs;
2. Where and when to report for testing;
3. The consequences of refusing to report for testing, including possible removal; and
4. The employee will be required to sign in at the collection site and provide a picture identification.

Section V. Reasonable Suspicion Testing

A. Reasonable suspicion testing may be required of:

1. Any employee in a TDP when there is reasonable suspicion that the employee has used federally illegal drugs, whether on or off duty, or
2. Any employee in any position when there is reasonable suspicion of on duty use or on duty impairment.

B. Prior to directing an employee to testing based on a reasonable suspicion that the employee has used federally illegal drugs, the supervisor ordering such testing will receive concurrence from a higher level official or authorized management official. A written statement will be prepared that will document the concurrence and articulate the reasons for testing. A copy of the written statement will be provided to the employee.

Section VI. Methods and Procedures for Testing

A. All drug testing will be conducted in accordance with the HHS scientific and technical guidelines. The methods and equipment used will meet the requirements set forth in the guidelines. The Agency agrees that the following procedure will be utilized to assure drug testing is reliable:

1. Affected employees will report to the designated location to be tested;
2. Employees traveling for testing will be reimbursed for travel costs to and from the testing site;
3. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided;
4. Laboratory analysis will comply with the HHS technical guidelines in effect at the time of testing;
5. If sufficient volume of urine is not initially able to be provided the Agency will ensure that collection site personnel allow the employee a reasonable amount of time to produce a sufficient volume;
6. The collection, handling and transportation of all specimens will be in accordance with the HHS chain of custody procedures; and
7. An authorized agent will collect all drug testing specimens.

Section VII. Confidentiality and Safeguarding Information

A. All samples will be subject to a strict chain of custody in accordance with the HHS technical guidelines.

- B. Employees will be guaranteed confidentiality in all matters relating to drug and alcohol testing in compliance with the Privacy Act, 5. U.S. C. §552a and §503e and as set forth in the EDWP.
- C. Employees will be given access to all records relating to their drug and/or alcohol test.

Section VIII. Counseling and Rehabilitation

- A. Employees whose tests have been confirmed positive will be referred to the ECAP, which provides counseling services at no cost to the employee.
- B. When feasible, the services of the ECAP will be offered at no cost to family members of employees with substance abuse problems and offered to employees who have family members with substance abuse problems.